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S. 917 AND S. 942:  
IMPLEMENTING THE WHITE HOUSE CONFERENCE  
ON SMALL BUSINESS—RECOMMENDATIONS ON  
REGULATIONS AND PAPERWORK

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Y 4. SM 1/2: S. HRG. 104-443

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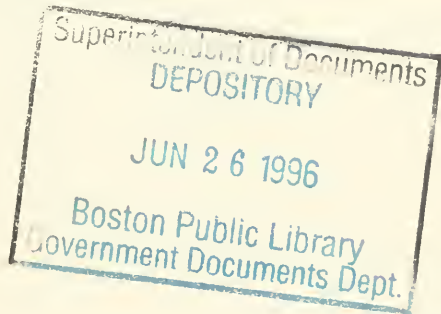
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COMMITTEE ON SMALL BUSINESS  
UNITED STATES SENATE  
ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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FEBRUARY 28, 1996



Printed for the Committee on Small Business

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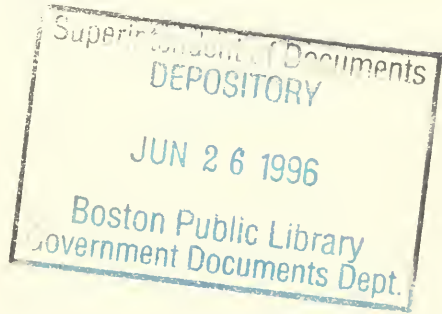
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**S. 917 AND S. 942:  
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FERENCE ON SMALL BUSINESS—REC-  
COMMENDATIONS ON REGULATIONS AND  
PAPERWORK**

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**WEDNESDAY, FEBRUARY 28, 1996**

UNITED STATES SENATE,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 9:37 a.m., in room 428-A, Russell Senate Office Building, the Honorable Christopher S. Bond, Chairman of the Committee, presiding.

Present: Senators Bond, Burns, Levin, and Bumpers.

Chairman BOND. Good morning. This hearing of the Small Business Committee regarding legislation "Implementing the Recommendations of the White House Conference on Small Business Concerning Regulation and Paperwork" will come to order.

My ranking member has been temporarily delayed. He is going to be joining us today, but we have Senator Feingold who wishes to present a statement and I know, Senator, you have a very busy schedule, so in the interest of accommodating you, we will let you kick this off with the opening statement. We very much appreciate your interest and we turn it over to you, sir.

**STATEMENT OF THE HONORABLE RUSS FEINGOLD, A UNITED STATES SENATOR FROM WISCONSIN**

Senator FEINGOLD. Thank you very, very much, Mr. Chairman. I am pleased to be here and be able to offer testimony on the proposed substitute for S. 942. I have a longer formal statement I would like included in the record.

Chairman BOND. It will be included in full. Thank you.

Senator FEINGOLD. Thank you, Mr. Chairman.

I would just like to make a few brief comments and to especially thank you, Mr. Chairman, for your leadership on this issue. It gives us the real forum and the engine for trying to get some reform in these areas.

Mr. Chairman, the regulatory structure that has developed over the year, I think does perform important safety and health and consumer protection functions and I think the need for strong, effective regulation is undeniable. At the same time, very few people would dispute that the current regulatory system really does need meaningful reform.

I have held nearly 250 listening sessions in my home State of Wisconsin during the past 3 years and I have to say that on many occasions, my constituents stand up and express what can only be described as tremendous frustration and anger with certain aspects of a regulatory process that too often is impractical and impersonal and needlessly burdensome.

The proposed substitute amendment before the Committee today and the original bill authored by the Chairman do a number of things that I believe respond to those feelings with a practical approach to the day-to-day problems of small business, and I think that was missing from some of the debate having to do with the larger, and I think more extreme regulatory reform proposal that we were considering last summer.

S. 942 contains several provisions that not only afford regulatory relief to our Nation's small businesses but what they also do is begin to change the attitude of government regulators who are often viewed by small business as adversaries rather than as sources of help and guidance. I think, Mr. Chairman, as I know you do, they should first be a source of help and guidance and only second a source of enforcement.

Many of the provisions in S. 942 are also in bills that I have introduced, including S. 1350, the Small Business Fair Treatment Act of 1995, and S. 554, a bill which seeks to reform the Equal Access to Justice law.

I want to specifically endorse three provisions of your bill, Mr. Chairman, and the first is I was extremely pleased to see the Equal Access to Justice provisions included in the proposed substitute amendment. This has been an interest of mine for about 11 years now. I authored Wisconsin's State Equal Access to Justice law in 1985 and a year ago I offered a measure that would try to strengthen the Federal law that was passed, I think, in the early 1980s.

The provisions in the proposed substitute amendment are a good start, but let me urge you to go one step further and completely eliminate the so-called substantial justification threshold that the Federal Government can use. If a small business or an individual prevails against a government action, then I think the Government ought to pay all the legal costs.

A second area, I heartily endorse the provisions relating to compliance guides. This provision was in S. 942 as well as my own measure, S. 1350, and I think, as obviously you do, requiring agencies to publish compliance guides describing regulations in straightforward, understandable language, and then holding agencies to that description when they are enforcing the regulation, makes a lot of sense.

Third, Mr. Chairman, I want to commend you and the Committee for another provision common to the bill and my own proposal, the one relating to so-called no action letters. Though the proposed substitute did make some changes in those sections, I think the language in the amendment retains the underlying intent—that agencies establish procedures to help small businesses by clarifying a law or regulation. No-action letters and similar formal agency responses can establish a record to which other businesses can then



turn in seeking guidance and a body of these letters can help ensure consistency in the interpretation of regulations by an agency.

One feature, Mr. Chairman, of the original provision that I would urge the Committee to consider was a specific time limit for agencies to act on a request for clarification. My full statement covers this in more detail, but I do want to just express one note of caution with regard to the proposed judicial review provisions. I support enabling an individual or entity subject to a government regulation to ask a court to review the final rulemaking record and determine if an agency has followed the proper procedures for issuing a regulation.

We struggled with this concept in the Senate Judiciary Committee on which I serve during our consideration of S. 343, the larger regulatory reform bill, and I would simply, with all respect, urge the Committee to proceed carefully in this area to avoid providing well-financed interests the ability to file petition after petition at every step in the rulemaking process to the extent that possibly we could have a paralysis rather than a reform of the regulatory process.

Again, Mr. Chairman, I thank you and the Committee staff for your work in this area, for convening the hearing and providing really one of the best mechanisms for real regulatory reform that has emerged in the 104th Congress.

[The prepared statement of Senator Feingold follows:]

Statement by Senator Russ Feingold  
before the Senate Committee on Small Business  
February 28, 1996

Mr. Chairman, I am pleased to appear before you today to offer testimony on the proposed substitute for S. 942.

First, I want to commend the distinguished Chairman for his leadership in this area. The original bill he introduced, S. 942, contained several provisions that would not only afford regulatory relief to our Nation's small businesses, but also would begin to change the attitude of government regulators who are often viewed by small business as adversaries rather than as sources of help and guidance.

Many of the provisions in S. 942 are also in bills I have introduced, including S. 1350, the Small Business Fair Treatment Act of 1995. In fact, a significant portion of that bill flows from many of the ideas included in S. 942.

Another bill, S. 554, which I introduced about a year ago, strengthens the Equal Access to Justice Act, and I was extremely pleased to see a similar effort included in S. 942.

Mr. Chairman, the regulatory structure that has developed over the years performs important safety, health, and consumer protection functions. Just two years ago, a cryptosporidium outbreak in the City of Milwaukee's water supply left 104 people dead and over 400,000 people seriously ill.

That was a tragic reminder of how just one small crack in the regulatory process can have devastating consequences for a community that until then had never experienced any such problems. The need for strong, effective regulations is undeniable.

At the same time, few would dispute that the current regulatory system needs meaningful reform.

Mr. Chairman, I have held nearly 250 listening sessions in my home state of

Wisconsin during the three years that I have been a member of this body. I have had constituents stand up at these meetings and express their tremendous frustration and anger with certain aspects of the regulatory process that sometimes is impractical, impersonal and needlessly burdensome.

This body debated a regulatory reform proposal earlier this summer that sought to respond to this widespread frustration and anger. But many of the proposals that were offered on the floor of the Senate during that regulatory relief debate last summer focused more on changes in the actual rule-making process and featured solutions that if not entirely Washington-based at least took a Washington perspective in addressing the issue.

Mr. Chairman, Washington lobbyists and Washington law firms certainly may have useful ideas to contribute to the general debate of regulatory reform, but that Washington-based perspective that some might take may not always produce the most helpful solutions to the problems facing smaller businesses.

While a multinational corporation with substantial resources might find it reasonable to devote funds to an enhanced petition process, that kind of solution might mean little for a small, family-owned business with a fraction of the resources of a large firm, and little working knowledge of the rule-making process.

The measures being considered by this committee take a different approach - an approach that has been missing in much of the regulatory reform debate, and one that I strongly endorse.

The principal strength of S. 942 and the proposed substitute before the committee is their focus on the day-to-day, practical problems of regulation with which small businesses must contend.

I want to address some of the individual provisions that are in the substitute amendment, and let me begin with the language strengthening the Equal Access to Justice Act, which has been of particular interest to me for some time.

The Equal Access to Justice Act was enacted in 1980 with the idea that small businesses and individuals who get into the ring with the federal government over enforcement of regulations should be able to recover their legal fees and certain other expenses if they prevail.

In general, I oppose the so-called "loser pays" or "English Rule" under which the loser in civil litigation must pay the costs of the prevailing party. The additional risk of those costs can act as a barrier to the courts for those who are most vulnerable.

That is not true, however, for the government. In cases where the government brings an action against a small business or an individual, the potential cost of losing poses no such barrier to government with its vast resources. In fact, the opposite is true. The costs confronting a small business or an individual that is the target of a government action may become a barrier to a just outcome, possibly forcing them to concede a violation, even when none existed, just to avoid costly litigation.

When I was in private law practice in Wisconsin, I became aware of how burdensome attorneys' fees and costs associated with litigation can be to a plaintiff with limited resources, even if their claim is just. Following my election to the Wisconsin State Senate, I authored legislation modeled after the Federal Equal Justice Act, and was pleased to see it enacted as a Wisconsin statute in 1985.

My continuing belief in the need to provide citizens and small businesses with relief under these statutes led me to introduce S. 554 last year. My bill would overhaul the Equal Access to Justice statute, bringing the Federal system up to date to reflect the 15 years worth of experience we now have with this statute.

My bill streamlines EAJA, making it easier to recover fees and expenses when you win against the federal government. Like the proposed substitute, S. 554 increases the reimbursement rate for attorneys' fees from \$75 per hour to \$125 per hour. While S. 942 and the proposed substitute limit the ability of agencies to prevail under the "substantial justification" defense, my bill goes a

step further and proposes elimination of the defense altogether. If a small business wins against government, I believe they should recover their costs without having to meet any additional test, and I ask that the committee consider a modification to the proposed substitute to reflect that.

According to a recent study by the Administrative Conference, the presence of this defense creates a perverse incentive to further litigation. An additional layer of costly and protracted litigation is hardly the result we want to perpetuate under the guise of reform. Building on what I believe is the need to avoid costly litigation when feasible, my bill also includes a mechanism to encourage settlement of these claims short of costly litigation. Here again, I ask that the committee consider including this change in the measure they report out.

As some may recall, during the Senate consideration of S. 343 last session, a slightly modified version of my proposal was adopted by voice vote as an amendment to the Regulatory Reform legislation. I think this demonstrates significant support for strengthening the Equal Access to Justice statute, and I am encouraged that, although the underlying Regulatory Reform bill has now stalled, the Chairman is moving this measure along. Doing so presents another opportunity to visit what I believe is a very important and worthwhile issue. I welcome the opportunity to work with Senator Bond on development of these provisions in the coming weeks.

Mr. Chairman, as I noted earlier, I was also pleased to see that the proposed substitute amendment contained a number of provisions from the original bill that were the basis of a good portion of another measure I introduced, S. 1350, the Small Business Fair Treatment Act.

In particular, I was glad the proposed substitute includes a modified version of the S. 942 sections requiring agencies to publish compliance guides describing regulations in straightforward, understandable language, and then holding agencies to that description when they are enforcing the regulation. This is an extremely worthwhile provision, and one which I included in S. 1350. Beyond the obvious help these guides could provide to businesses affected by

a government regulation, requiring an agency to think out and describe a new regulation in a clear and understandable way will only enhance the ability of that agency to administer the regulation.

Another provision common to the chairman's bill and my proposal relates to so-called "No Action Letters," and though the proposed substitute did make some changes in those sections, I think the language in the amendment retains the underlying intent that agencies establish procedures to help small businesses needing clarification of a law or regulation in a particular instance. In addition to providing specific direction to a small business in dealing with subjective interpretations of agency regulations, "no action" letters and similar formal agency responses can also establish a record to which other businesses can turn in seeking guidance on how a particular regulation should be interpreted. A body of these letters also ensures consistency in the interpretation of regulations by an agency, something that can only further enhance compliance.

One feature of the original provision that I urge the committee to consider was a specific time limit for agencies to act on a request for clarification. The chairman's bill, and the measure I introduced, both included a 90 day limit by which time agencies would have to at least respond to a request. Whether or not 90 days is the ideal time frame, requiring agencies to establish some deadline would at a minimum assure small businesses that they are not ignored.

I want to address briefly a provision from the original bill relating to voluntary self-audits which was not included in the proposed substitute. I included a provision on voluntary self-audits in my own legislation. That provision went beyond outlining how the self-audits would function and actually required agencies to establish such a procedure.

In listening to small businessmen and women in Wisconsin, one of the most troubling complaints that is raised with respect to government regulation is the feeling that government agencies too often take a confrontational or adversarial approach in dealing with the business.

Whether or not this feeling is justified in every instance, in many instances, or in only a few, it is honestly felt and reveals a problem that needs fixing.

In one instance, the owner of a small contracting company that does construction on older houses contacted my office expressing concern that certain OSHA regulations being applied to his business were probably originally created for larger construction companies dealing with different types of structures and should be modified for companies engaged in his kind of business. He cited requirements that he prepare a safety program for every job he does - even though the homes on which he works are much the same - as being inappropriate and time-consuming, and he outlined various other concerns.

After my office contacted the agency and asked its views on his suggestions, OSHA showed up at his work site to conduct a surprise inspection.

A small business ought to be able to raise concerns about an agency's regulations without fear of triggering an enforcement action.

When the relationship between those who oversee and enforce regulations and those who must observe them deteriorates in this manner, it only hinders compliance.

In providing for a voluntary self-audit procedure as part of my legislation, I felt that by allowing businesses to request a review of their operations, without fear that the results would be used against them, we could begin to improve that relationship, and change the way business perceives regulators from adversaries to sources of help.

As the committee may know, OSHA has an onsite consultation program in many States, a program I believe that was initiated by the late Wisconsin Congressman William Steiger. It is completely separate from OSHA's inspection program, and averages about 25,000 visits annually.

There is great potential for changing both the attitude of regulators toward



businesses and the way businesses view government agencies through this kind of approach. I believe the voluntary self-audit provisions in the Chairman's original bill and in my bill can expand and strengthen existing programs like OSHA's onsite consultation, and extend it to agencies that do not have similar programs. Though the voluntary self-audit provisions were not included in the substitute, I very much hope the Committee will consider acting in this area, if not on this bill then possibly on future legislation.

A provision of S. 942 that was largely included in the substitute established a Small Business and Agriculture Ombudsman program within the Small Business Administration along with Regional Small Business Fairness Boards. The goal of reviewing agency enforcement activities is right on the mark. It is a concern that I addressed in S. 1350 by explicitly prohibiting agency personnel practices that reward employees based on the number of violations they can find or the fines they can levy.

I included this provision in response to comments made to my office by small business people who have reported that agency personnel have felt compelled to find something wrong, even if it is small, in order to justify their visit to the firm. Though there is currently a Presidential directive prohibiting that kind of practice, I feel that prohibition merits the full force and permanence of Federal law.

This goes to the heart of what the role of a regulator is. Personnel practices based on these kinds of performance incentives may quite naturally provoke adversarial relationships. Regulators need to remain independent from the entities they oversee, but unnecessary antagonism can actually hinder efforts to ensure compliance with the rules.

I think the provisions establishing a Small Business Ombudsman and Fairness Boards are headed in the right direction, and I look forward reviewing the final language reported out by the committee in this area.

The final provisions in the proposed substitute, relating to regulatory flexibility did not appear in S. 942 as introduced. It is my understanding that the



sections providing early input from small businesses in rulemaking is a modified version of S. 917, authored by Senator Domenici. The intent of the Domenici provisions make a great deal of sense to me, and I look forward to reviewing the committee's action with respect to the Domenici language.

However, I have some concerns with the sections relating to judicial review. The purpose of those provisions is to grant judicial review of certain regulations to small entities that may be adversely affected by them.

The notion of compelling federal agencies to contemplate the effects certain regulations may have on the small business community is well warranted, but providing judicial review of agency regulatory actions is a concept that the Senate Judiciary Committee struggled with during its consideration of S. 343, the Comprehensive Regulatory Reform Act of 1995.

I support enabling an individual or entity subject to a government regulation to ask a court to review the final rulemaking record and determine if an agency has followed the proper procedures for issuing a regulation.

However, I do not support proposals that would allow a well-financed interest to file petition after petition after every step in the rulemaking process, which would have the practical effect of paralyzing -- not reforming -- the regulatory process.

The precise language used in the area of judicial review was the source of considerable controversy when S. 343 was debated last summer, and may be so again under this proposal. I will only add that I urge the committee to proceed with great care in this area. The bulk of this proposal has great merit, and I very much hope we can find a way to provide access to the courts for small businesses without also opening the door to abuse.

The current system is not acceptable; the need for reform is clear and imperative. And though the larger regulatory reform legislation has bogged down, I very much hope a compromise can be worked out and a meaningful reform package can be enacted into law.

But, even if a compromise on the larger regulatory reform measure can be hammered out, it is likely that it will still reflect a process-oriented approach that may provide large corporate interests with avenues for relief, but does little to address the day-to-day problems facing small business.

Nor does such legislation address the very real feeling of small businesses that government regulators too often act as adversaries rather than to provide guidance in helping firms to comply with the law.

By contrast, the provisions outlined in this measure both provide some practical regulatory relief and can improve the relationship between businesses and agencies. The process reforms of other regulatory reform measures merit our consideration, but I urge my colleagues not to allow that approach to dominate a debate which should rightly be focused on that portion of the business world that is most severely burdened by government regulation - small business.

Mr. Chairman, again I thank you and the committee staff for your work in this area, and for convening this hearing.

Chairman BOND. Senator, we very much appreciate your time and your thoughtfulness in presenting this testimony. You have heard undoubtedly what I have heard in my State of Missouri and I am sure that Senator Levin has around Michigan, that people in small business think they perpetually have the short end of the stick.

The Regulatory Flex judicial enforcement really is the centerpiece of this. We have had Reg Flex on the books since 1980 and without some kind of mechanism to enforce it, it appears that the Advocacy Council, the SBA, and everybody else has been essentially disregarded by some agencies and I think that is why the President and everybody else has said it is time that we get a Regulatory Flex enforcement.

We are obviously dealing with this as a work in process and if you have any suggestions for us on the judicial enforcement, in the terms of it or if you do not have now, if you look at it and have any specific suggestions, we would welcome those because we want to try to work out the problems in the Committee so that we can have a bill which will have broad bipartisan support for the floor.

Do you have any specific suggestions?

Senator FEINGOLD. I would simply get back to you on that because my main purpose in being here today was to highlight the very positive aspects of your legislation. I merely added that as a caution and I will work with you and come back with some of the items that we looked at in the Judiciary Committee.

My purpose is to say that this bill shows a sensitivity to the frustration that is out there and the goal is to somehow change the attitude of those who enforce for the Federal Government to make sure they are trying to be a friend and a helper to small business first. That is the message I want to leave today.

Chairman BOND. If we can find any vehicle that does that, we will be taking a significant step forward.

Senator Levin, do you have any questions?

Senator LEVIN. No. I have a brief opening statement after Senator Feingold has finished.

Chairman BOND. I was hoping that you would come. I saved my opening statement so you can hear mine, too.

[Laughter.]

Chairman BOND. Senator, thank you very much. We appreciate your being here.

Senator LEVIN. I think I will modify my comments.

[Laughter.]

Chairman BOND. In order to accommodate Senator Feingold, we started with his testimony first. I know that our ranking member, Senator Bumpers, is going to be joining us at some point in the morning and there is a possibility that I may be called away to vote in the Banking Committee. We will look forward to turning over the gavel to whomsoever is here.

Senator LEVIN. I am off to the Armed Services Committee.

**OPENING STATEMENT OF THE HONORABLE CHRISTOPHER S. BOND, CHAIRMAN, COMMITTEE ON SMALL BUSINESS, AND A UNITED STATES SENATOR FROM MISSOURI**

Chairman BOND. I will give you the benefit of my opening statement. With that, ladies and gentlemen, let me lay the framework and the groundwork for the measure that we hope to be able to mark up very shortly out of this Committee and take it to the floor.

As has been said here already, there is a great sensitivity and a great concern among small business that they be given a seat at the table, that they have a say in the regulatory actions that affect them. Small business after small business has told me, and I know my colleagues have heard the same thing, that they do not feel they have any voice in it, that when the Federal Government acts, they act with respect to some broader interest without taking into account the small firm that may have 5, 10, 25 employees. If there is one thing that I hope this Committee can do, it is to be an effective voice and to be, even more important, an effective ear in listening to those small businesses around the country.

Last year, some 2,000 small business people, men and women, met in Washington under the auspices of the White House Conference on Small Business to identify the important public policy issues affecting small business. The Washington Conference completed a year-long grassroots effort where over 20,000 small business representatives sifted through more than 3,000 policy recommendations in 59 State conferences and 6 regional meetings. Over 400 of the most important policy recommendations were voted on by delegates to the Washington conference. The top 60 recommendations were published by the Conference last September as a report to the President and Congress entitled "Foundation for a New Century".

We will be hearing more on that report from today's witnesses, but before we do, I would like to express my sincerest appreciation to all the small business delegates whose ongoing commitment and effort to make our government more responsive have greatly aided our work here and have given us a road map to follow.

This Committee has already held hearings on the top Conference recommendation on the status of independent contractors and I hope next week to be able to introduce legislation to clarify and simplify the classification of independent contractors.

Today's hearing is designed to examine three Conference recommendations relating to regulation and paperwork. Together, these recommendations call for reforms in the way regulations are developed, the way they are enforced, and in government paperwork requirements.

The common theme of all three recommendations is the need to change the culture of government agencies. As the Vice President said in his speech to the Conference delegates last year—government regulators need to stop treating small business as potential suspects and start treating small business as a partner, sharing in our common and very important economic goal of providing jobs and opportunity for all Americans.

The Vice President also noted that this change in the culture of government will take years of effort to accomplish. While no single administrative or statutory change can achieve this goal, both Con-

gress and the Administration have a role to play in making these goals a reality.

As I have said, here at the Small Business Committee, we can do our part by moving two pieces of legislation that have been referred to us. Together, I believe these bills will go a long way toward delivering on the White House Conference on Small Business recommendations.

The first bill is S. 917, the Small Business Advocacy Act, introduced by Senator Domenici following a Committee field hearing that he and I held in New Mexico last year. S. 917 makes important reforms to provide small business with early input in the rule-making process.

The second bill is S. 942, the Small Business Regulatory Fairness Act, which I introduced last June. It will be the first legislation in this Congress that seeks to reform the way regulations are enforced against small business, an additional problem separate from the issuance of new rules.

Two weeks ago, we circulated for comment a draft Committee substitute that combines elements of both bills with language providing for judicial review of the Reg Flex Act, the No. 3 recommendation of the White House Conference last year. This recommendation said, in part, "Congress should amend the Regulatory Flexibility Act, making it applicable to all Federal agencies, including the Internal Revenue Service and the Department of Defense, to include judicial review of regulations, providing courts the ability to stay harmful and costly regulations and to require agencies to rewrite them." We intend to do just that here. We should note that the President and the SBA Administrator previously have written the Committee stating their strong support for judicial review of Reg Flex. The SBA's Chief Counsel for Advocacy, one who has been rebuffed too many times in efforts to gain adherence to the Reg Flex requirements, has also stated his support in testimony before this Committee.

The draft substitute does not address all the specific Conference recommendations on regulation and paperwork. A bill that sought to do that probably could not get 60 votes in the Senate and probably could not get floor time to get passed. But I do not think we can afford to let the perfect be the enemy of the good. I want a bill that we can pass through the Senate with strong bipartisan support and become law this year.

Some issues simply are going to have to wait for another day. Senator Feingold mentioned the broader regulatory reform effort. Many of us have been working for a long time to craft a compromise on that. That is not easy. There are many, many contentious issues. But I think we can push legislation that will begin the process to change the culture of the regulatory agencies and reform the regulatory process. This will be a priority that will continue and we will pursue at every opportunity.

The Committee majority and minority staffs have been discussing the proposed legislation. I believe the draft substitute reflects progress that we have made in moving toward a bipartisan bill. Clearly, we do not claim it is perfect. That is why we are holding the hearing. That is why we want specific suggestions and changes. If we can get to a better bill, our goal would be to move as quickly



as possible to report the legislation out of Committee with a strong bipartisan vote. I see no fundamental barrier to doing so and I think if we can get it out there, we have a good chance of getting it passed. I think the mood is right and I think the time is here.

The SBA's December 1995 progress report on implementing the White House Conference recommendations stated "The administration at all levels is committed to working with Congress to implement the Conference recommendations." With this commitment and the President's personal support for judicial review of Reg Flex, I think we can get a bill that will pass the Congress and be signed.

I look forward to hearing more about the Conference recommendations from our witnesses who participated as delegates. I want to encourage all of today's witnesses to offer their suggestions for improving the legislation in either their written or oral testimony. We would ask that you limit your oral presentations to about 5 minutes. We will have opportunities and questions and answers to discuss other things.

We do include all of the statements in full as part of the record, and as we discuss particular areas, if you have additional thoughts, particularly with regard to the specifics of the legislation, I hope that you will let us know as quickly as possible by fax, if you can, so that we can make any changes that seem desirable at the first possible opportunity.

With that, I would be happy to turn to the Senator from Michigan and thank him for his participation and invite him to offer his opening statement.

**OPENING STATEMENT OF THE HONORABLE CARL LEVIN,  
A UNITED STATES SENATOR FROM MICHIGAN**

Senator LEVIN. Thank you, Mr. Chairman.

First, let me commend you for the leadership that you have shown in this area, for the bill that you have introduced, and for responding as you are to the White House Conference on Small Business, which was held last year. I look forward to working with you and our colleagues on this Committee to craft legislation, based on the proposals coming out of that Conference, to strengthen America's small businesses.

One of the proposals that we have before us, as you noted, Mr. Chairman, in S. 942, which is your bill, would establish an ombudsman in each of the SBA's regional offices. That ombudsman would solicit information from small businesses on regulatory enforcement practices and develop a rating of how well agencies perform their enforcement duties.

I have been working for the past several months on a somewhat similar proposal. The legislation that I am working on would create an office of ombudsman in each major regulatory agency. The legislation would give the ombudsman in each agency sufficient authority to solve problems and sufficient independence from the regulatory structure of that agency to act fairly. The ombudsman in each agency, under my approach, would then be the mediator or the honest broker between the small business who was the subject of an inspection or an enforcement action and the regulatory apparatus of the agency.

This was a recommendation of the Administrative Conference of the United States back in 1990 and I think it makes a lot of sense. Much of the dissatisfaction of the regulated public with regulations is not just with the content of some of our regulations but also with the way in which they are enforced, as our Chairman has noted.

Agencies too often view a small business as a violator to be caught instead of as a company to be helped into compliance, and that is a big difference. The ombudsman in each of the major regulatory agencies under my approach would be there to put on a friendly face, to reflect a spirit of cooperation on the implementation of regulatory requirements instead of being the adversary.

Your bill, Mr. Chairman, aims at that same purpose I think in a very important way. It does it in a somewhat different way, however, placing the ombudsman in the Small Business Administration, and I would like to work with you on that to look at the pros and cons of having the ombudsman in the Small Business Administration versus having an ombudsman in each of the major regulatory agencies. I think there are some pluses and minuses in each approach. Their goal is the same, obviously, and I would like to work with you on that.

The White House Conference recommends that the Congress require agencies to provide a more collaborative environment when they enforce regulations and I could not agree more. We have all heard the stories about the difficulties which small businesses face in dealing with burdensome, confusing, and expensive regulations. The situation is made far worse when Federal regulators become overly zealous in their attempts to enforce regulations to the letter of the law, often without considering the circumstances that may be unique to individual firms. When that happens, Federal agencies become adversaries against rather than advocates for small business and everybody ends up losing.

So it boils down to this. We need to push for fundamental changes in the culture of business regulation. We need to help businesses and government agencies work together more as partners and collaborators to achieve goals such as environmental protection and worker safety, goals that if realized will benefit all Americans. In order to do that, small businesses must have a more significant voice in the policymaking process. We need to give them a stronger voice within the agencies that regulate them, and more importantly, we must ensure that agencies are ready and willing to listen.

That is why I believe that small businesses need in the regulatory agency an ombudsman, an agency official who will listen objectively to their concerns and try to work with them and the agency to resolve potential disputes. That would be the role of an agency ombudsman, a neutral official with the power to investigate complaints and to recommend solutions to disputes between agencies and the regulated parties.

We have done a study of the agencies which currently do have ombudsmen and I am going to summarize the result of our study in the balance of my statement and I would just put that in the record to save time. But again, I want to thank you, Mr. Chairman.

[The prepared statement of Senator Levin follows:]

PREPARED STATEMENT OF SENATOR CARL LEVIN  
BEFORE THE SENATE COMMITTEE ON SMALL BUSINESS

February 28, 1996

Mr. Chairman, I commend you for holding today's hearing to discuss recommendations of the 1995 White House Conference on Small Business, and I look forward to working with you and my other colleagues on this committee to craft sound legislation, based on those proposals, to strengthen America's small businesses.

One of the proposals we have before us, in S.942, would establish an ombudsman in each of the SBA regional offices. That ombudsman would solicit information from small businesses on regulatory enforcement practices and develop a rating of how well agencies perform their enforcement duties.

I have been working for the past several months on a somewhat similar proposal, Mr. Chairman. The legislation I am working on would create an office of ombudsman in each major regulatory agency. The legislation would try to give the ombudsman sufficient authority within the agency to solve problems and sufficient independence from the regulatory structure to act fairly. The ombudsman would then be the mediator or honest broker between the small business who is the subject of an inspection or enforcement action and the regulatory apparatus of the agency.

This was a recommendation of the Administrative Conference of the United States back in 1990, and it makes a lot of sense. I believe much of the dissatisfaction of the regulated public with regulations is not only with the content of some of our regulations but also with the way in which they are enforced. Agencies often view a small business as a violator to be caught instead of as a company to be helped into compliance. And that's a big difference. The ombudsman would be there to put a friendly face -- the spirit of cooperation -- on the implementation of regulatory requirements.

Now your bill, Mr. Chairman, takes a somewhat different approach. It places the ombudsman in the Small Business Administration. I'd like to work with you on that -- to look at the pros and cons of having the ombudsman in the regulatory agency versus the SBA. I hope we can work together on that.

The White House Conference recommends that Congress require agencies to provide a more cooperative, collaborative environment when they enforce regulations targeted at small businesses. I couldn't agree more.

We've all heard stories about the difficulties small businesses face in dealing with burdensome, confusing and expensive regulations. This situation is made even worse when federal regulators become overly zealous in their attempts to enforce regulations to the letter of the law, often without considering the unique circumstances of individual firms. When this happens, federal agencies become adversaries against rather than advocates for small business and everybody ends up losing.

It boils down to this, Mr. Chairman; we need to push for fundamental change in the culture of business regulation. We need to help businesses and government agencies work together as partners to achieve goals such as environmental protection and worker safety, goals that, if realized, will benefit all Americans.

In the past, small businesses have not had a significant voice in the policy-making process. We need to give small businesses a stronger voice within the agencies that regulate them and, most importantly, we must ensure that agencies are ready and willing to listen.



I believe small businesses need in the regulatory agencies, an ombudsman, an agency official who will listen objectively to their concerns and try to work with them and the agency to resolve potential disputes. That's the role of an agency ombudsman, a neutral official with the power to investigate confidential complaints and to recommend solutions to disputes between agencies and regulated parties.

My staff has looked at the current use of ombudsmen in federal agencies, to evaluate their effectiveness and to ascertain whether more regulatory agencies would benefit from their services. Let me briefly summarize what we've found.

Ombudsmen are scattered throughout the federal government, functioning in a variety of roles in a variety of agencies. They rarely possess the authority to enforce their recommendations, and instead rely on the powers of investigation and report to influence the actions of agency officials and outside parties. Most of them act as internal ombudsmen, handling personnel problems that arise within a given agency. There are, however, a limited number of ombudsmen in regulatory agencies, who act as external ombudsmen, receiving complaints and answering information requests from regulated parties. Two of the better known examples of regulatory agencies with ombudsman are the EPA and the FDA.

The EPA has two separate well-established ombudsman offices, which address small business concerns and hazardous waste issues, respectively. EPA's small business ombudsman acts as a liaison to the small business community by distributing information on regulations, communicating the concerns of small businesses to the agency, and hearing grievances from small businesses adversely affected by agency regulations.

EPA's hazardous waste ombudsman was created by the Resource Conservation and Recovery Act Amendments of 1984 as a 4-year pilot program to redress EPA's poor record in responding to business' inquiries regarding growing numbers of environmental regulations targeted at small businesses. After the statutory authorization ran out, EPA continued the office's operations through administrative action. Today, the office still attempts to resolve disputes between EPA and individuals, businesses, and communities, particularly with regard to the enforcement of EPA's Superfund authorities.

The FDA ombudsman was created by agency action in 1990 to resolve disputes between the agency and regulated industries with particular regard to investigational and premarket applications for products and establishments.

By and large, these ombudsmen have improved communications between the agencies and regulated parties, uncovered systemic problems and chronic abuses in the regulatory process, and saved valuable resources through informal dispute resolution that otherwise would have been wasted on the costs of formal legal proceedings.

It is interesting to note that several other important regulatory agencies, such as OSHA and the Department of the Interior do not use ombudsmen, but rather rely on more traditional forms of dispute resolution.

The 1990 report by the Administrative Conference formally recommended that Congress enact legislation to establish ombudsman positions in federal regulatory agencies. This report argued that legislatively mandated ombudsman are more independent of agency politics than those created by agency action. In addition, it suggested placing ombudsman in the office of the agency's Secretary or Administrator, in order to give the office maximum authority and broad access to agency resources.

Again, I look forward to working with you, Mr. Chairman, to reform the way federal agencies enforce regulations targeted at America's small businesses.

Chairman BOND. Thank you very much, Senator Levin. We appreciate your constructive comments. I know that there are some ombudsmen in agencies. There is the pattern of Inspectors General. We had heard from a number of small businesses who were very much concerned that if they had a complaint against, let us take Agency O, for example, without designating anything further, that if they had to go to Agency O, the person about whom they were complaining is much more likely to find out about it and on the next visit perhaps be even more hostile. That is why we had suggested moving the ombudsman out of the actual agency.

If the witnesses today have comments on one or the other, or those who are listening or watching have comments, we would welcome it, because part of this is to find out what the people feel. But you have made a very constructive and helpful suggestion and I appreciate that.

It is now my pleasure to turn to my colleague and friend from Montana, Senator Burns.

**OPENING STATEMENT OF THE HONORABLE CONRAD R. BURNS, A UNITED STATES SENATOR FROM MONTANA**

Senator BURNS. Thank you very much, Senator Bond, and Mr. Chairman, thank you for your leadership on this.

I want to associate myself with the words of my good friend from Michigan. I just wrote down some points here. I would ask that my full statement be made a part of the record.

Chairman BOND. It will be made a part of the record.

Senator BURNS. Let me just make a couple of comments, because I had a hearing in Montana with regard to regulation, regulatory reform, how we make our regulations and rules, and not only do we find people that get pretty overly enthusiastic in the bureaucracy about enforcing rules to the letter of the law but we are also remiss, as elected officials ourselves, and myself being included, who represent a constituency that should be a part of, a physical part of the rulemaking after pieces of legislation have been passed.

I go back to an experience I had when I first came here. They were redoing the transportation act and reidentifying hazardous materials in transportation. They had vegetable oils, such as soybean oil and safflower oil among those to be transported and categorized the same as used motor oil and the petroleum and actually some corrosives that were worse than used motor oil.

I can remember just trying to get a hold of something in the vegetable oil line to go down and to make my point at a hearing that was being held down at the Department of Transportation and the only thing I could get a hold of was a little vial of soybean oil, and they had that to be in the rules and regulations to be classified, in the transportation sense, anyway, to be classified as a hazardous material. I drank the soybean oil.

Chairman BOND. Did you challenge them to drink the motor oil, since they thought that was the same?

Senator BURNS. No, but I—

Chairman BOND. That might have been a good idea.

[Laughter.]

Senator BURNS. I will tell you, to set the example of how hazardous it really was, we got those vegetable oils and those edible oils

off of the hazardous materials list. However, I do not recommend that. I spent the next few days probably within an arm's length of any bathroom I could find.

[Laughter.]

Senator BURNS. It will sort of speed up the situation by a lot.

[Laughter.]

Senator BURNS. But I think in the hearing, what we heard and the situation that we have now in the country where basically in 1995, only an economic growth of this country of around 1.4, something like that, and forecasted in 1996 around 1.9, less than 2, and then we see housing starts on the way down, 6 percent down in 1995 and they are forecasting maybe a 7 percent drop-off in 1996.

This tells me that there are some things happening out there. If the economy is as robust as some would like to proclaim, there is something out there that is really slowing down the process of investments, of creating jobs, of an economy that has to expand to take on the new people that are coming on line.

I also want to bring up one other thing, how important this is, too. I have a daughter that will graduate medical school next spring, a year from now. I am very proud of that. But I have also got an elderly mother that is in a care center. When we started talking about care centers and even hospitals, that amount of paperwork and all the little rules and regulations that they have to go through that adds to the total cost of health care that must be complied with, and especially if somebody from OSHA walks in there, it is chaos.

We have to take a look and get actively involved not only in the rulemaking but also to have a representative in each of the Small Business offices that would represent and be an advocate for our system of economics in this country. Nothing happens until a sale is made and somebody should always remember that and to be an advocate of small business rather than a hard-fisted enforcer.

So I am looking forward to these hearings, and I do not know why we should have them if my Senator from Michigan is in accordance with us. Let us take his amendment and pass the thing and go home. Thank you very much.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF SENATOR CONRAD BURNS  
SENATE COMMITTEE ON SMALL BUSINESS  
WEDNESDAY, FEBRUARY 28, 1996

Mr. Chairman, last fall we held a hearing on the cost of federal regulations to small businesses. I think it is only right that we now look at the ways we can provide relief from regulations and paperwork burdens for these same small businesses.

I have talked to small businesses in Montana -- and I've read the White House Conference on Small Business recommendations -- and inevitably, when I ask folks what we can do to help them, they say "Get off our backs," or "Get out of the way." They can grow and create jobs and prosper, if we would just stop requiring so many darned forms. If they wouldn't have to comply with so many regulations, devoting staff to duplicitous paperwork, they could afford to succeed.

Mr. Chairman, you have heard about my field hearing in Kalispell on OSHA logging regulations, so I won't go over the ridiculous nature of some of those proposed rules. However, OSHA is not the only culprit. In fact, I've been hearing that EPA regulations, and regs dealing with the Endangered Species Act are coming out so fast and furiously, Montana businesses can't keep up. They are so overwhelmed with bureaucracy they can't even focus on the business at hand. That's no way to prosper.

As you know, Mr. Chairman, I am a co-sponsor of S.942, the Small Business Regulatory Enforcement Fairness Act, and I really do look forward to moving this bill along. Though it may not reduce the number of regulations, it will certainly simplify them. And by involving small business in the process -- deciding reporting requirements, providing relevant information, and helping regulators make enforcement reasonable -- we can begin to restore some common sense to how we do business.

I know we have quite a list of witnesses and I want to get right to their recommendations. So, I will keep my remarks short. I applaud the Committee for moving on this. Though we have a short legislative calendar, I think this is one item we can get done. It's pro-business, it's pro-America, and it will help create economic prosperity. Who can argue with that?

Thank you, Mr. Chairman, for holding this hearing. I look forward to working closely with you to see this enacted.

Chairman BOND. Thank you very much, Senator Burns. We probably, if you stick around here and listen, we probably are going to get many more good ideas before this hearing is over.

Senator BURNS. I have some more soybean oil.

Chairman BOND. I will let you do that. I agree with you on the need for more legislative oversight. I think that is something that we have too often neglected here. Congress does have a constitutional responsibility to oversee the Executive Branch. We pass the laws and then the agencies write the regulations and too often we don't do a good enough job of following up. The judicial review measure that was introduced by Senator Nickles would help us oversee the agencies and put the monkey back on our back, sending the regulations up to the Hill for us to look at and force us to take a look at. We should be doing that, and to the extent that we have not, Congress has been a part of the problem.

Senator BURNS. We were a part of that, and I would tell you that right now, I still think that rules and regulations should be submitted to the Committee of jurisdiction, to the Senate and the House for their approval of those rules, if they meet the intent of the legislation. We find rules and regulations that you have to go over with a divining rod to find the meaning and how it relates back to the original intent of the legislation.

Chairman BOND. We will have to work around the Supreme Court ruling on that—

Senator BURNS. I know, but what else is new?

Chairman BOND. At least we can review it.

Senator BURNS. Maybe we can regulate them.

[Laughter.]

Chairman BOND. With those comments, we now turn to the first panel. We are very pleased to introduce Mr. J. Scott George, chair, Regulation and Paperwork Implementation Team of SBA Region 7 of the White House Conference on Small Business, and he is general manager of Mid America Dental, Hearing, and Vision Center in Mount Vernon, Missouri. With him is the chair of the SBA Region 3 White House Conference on Small Business Regulation and Paperwork Implementation Team, Rosemary Reed, who is also president of Double R Productions in Washington, D.C.

We have the chair of Region 5 of the Regulation and Paperwork Implementation Team of the White House Conference on Small Business, Mr. Scott Holman, Sr., who is president and chief executive officer of Bay Cast, Inc., of Bay City, Michigan, who is also appearing here on behalf of the U.S. Chamber of Commerce.

We are delighted to have all of you with us and we would like to begin with Mr. George.

**STATEMENT OF J. SCOTT GEORGE, CHAIR, REGULATION AND PAPERWORK IMPLEMENTATION TEAM, SMALL BUSINESS ADMINISTRATION REGION 7, WHITE HOUSE CONFERENCE ON SMALL BUSINESS, AND GENERAL MANAGER, MID AMERICA DENTAL, HEARING, AND VISION CENTER, MOUNT VERNON, MISSOURI**

Mr. GEORGE. Thank you, Mr. Chairman. Mr. Chairman and members of the Committee, good morning.



My name is Scott George and I am the general manager of Mid America Dental, Hearing, and Vision Center in Mount Vernon, Missouri. It is a same-day health care facility. I am also president of 3-V Corporation, the company that owns that facility. I am proud to be here today to represent over 2,000 small business delegates to the 1995 White House Conference on Small Business.

During the Conference, I served as the Regulatory Chair for Missouri and was the floor leader in developing the final five regulatory reform recommendations. As you mentioned, I served on the White House Conference Implementation Team as a regional chair. I am also on the NFIB Guardian Council from Missouri and a member of NSBU.

First, Senator, I would like to thank you and the rest of the Committee for conducting this hearing and for inviting small business people like myself to testify and for continuing the fight to reduce the regulatory burdens on small businesses like ours. I ask that my written statement be included in the record.

Chairman BOND. Your full statements will be included for all the members of the Committee. Thank you.

Mr. GEORGE. Thank you, sir.

The White House Conference regulatory reform resolutions call for nothing less than a sea change, a revolutionary new approach to regulations in the United States, a new approach based on cooperation, not confrontation, based on common sense, not total risk elimination, on scientific cost benefits and risk assessment, not unrealistic calculations, on fitting regulations to the size of the business, and on a periodic review of current regulations to verify that cost/benefit ratios truly do exist and eliminate those regulations that no longer measure up.

One example from my business. The new OSHA blood-borne pathogen standards became effective for dental offices on March 3, 1992. OSHA estimated the annual cost for compliance with this regulation at \$2,784.50 per office. OSHA estimated nationally that it would cost \$87 million a year to comply.

After initial startup costs of \$25,000 for equipment alone, our office costs for this one regulation exceeds \$100,000 a year, not including lost revenue. This rising health care cost is paid for by our more than 10,000 mostly elderly patients at the rate of \$10 an office visit. Even if the average cost was only \$50,000 per dental office in the United States, the national cost would exceed \$1.5 billion a year.

To what benefit? A Centers for Disease Control report through December 1994 found not one single health care worker in the dental field to have contracted the HIV virus through occupational exposure, not one.

These White House Conference on Small Business regulation resolutions were designed to reduce the burden of excessive regulations on small business, to eliminate that confrontational attitude that presently exists and provide a means of redress for small businesses adversely affected by regulations.

The Senate bill, S. 942, substitute is a good first step toward implementing those resolutions. Amending the Reg Flex Act to include the IRS and granting judicial review are the key issues. Seeking small business input before regulations are implemented is

a good beginning toward ensuring better regulations and less of them.

Almost every small business owner wants a safe working environment for their employees. We know each one of them personally. We know the cost when one of them is missing. Small business owners and our immediate families work with them, side-by-side, every day, so we want a safe environment.

Fewer common sense-based regulations will allow small businesses to be more productive, improve compliance with those regulations, and reduce the burden of excess rules and regulations. Legislation is required. Executive direction will not do the job. These agencies operated for decades in a confrontational manner. When challenged, they say, we are just complying with the law, and if you do not agree, get the law changed.

Mr. Chairman, and members of this Committee, that is why we are here today, to get the law changed.

[The joint prepared statement of Mr. George and Ms. Reed follows the oral presentation of Ms. Reed.]

Chairman BOND. Thank you, Mr. George. We are here for that same reason.

Ms. Reed.

**STATEMENT OF ROSEMARY REED, CHAIR, REGULATION AND PAPERWORK IMPLEMENTATION TEAM, SMALL BUSINESS ADMINISTRATION REGION 3, WHITE HOUSE CONFERENCE ON SMALL BUSINESS, AND PRESIDENT, DOUBLE R PRODUCTIONS, WASHINGTON, D.C.**

Ms. REED. I thank you, of course, for holding this hearing. I am Rosemary Reed. I own and operate Double R Productions, a television production company here in Washington, and also AVS Post with my husband, Mike Hurdlebrink, and that is a post-production company here in Washington.

To just give you an idea of what we do or what I do, I am the president of my company. I am also the chief executive officer. I am the office manager. I am the insurance administrator. I am the personnel director. I am the PR/marketing developer. In my spare time, I also write, produce, and direct television on the side to make a living and help keep my 15 employees employed.

With all of these hats, which is typical of most small business operations, we need all the help we can get in eliminating regulation and paperwork. Let me talk first about paperwork, which drives me crazy. I will just give you one example.

To do television production and editing business with the Federal Government, we must be on the qualified video producers list, which is no small task to begin with. Then I also must have a General Services Administration contract. It took one of my employees about 2 hours per day for about 6 months to land a GSA number and she is supposed to be coordinating our production in her spare time.

To bid on a \$30,000 production project, and that is not very high for production, for the Naval Media Center, I would have to have an entire division to churn out proposals this size in triplicate, not to mention just think of all the trees that are killed in the process. This is the RFP alone. You can see how big this is for one \$30,000

project. Just getting through this RFP and understanding what this government agency wants is enough to make college graduates cry. I have seen this happen. It is not a pretty picture.

John Robinson, who is the chair of our D.C. delegation, owns Black Diamond Enterprises. It is a small manufacturing firm. They make heating trays, metal serving trays for McDonald's, among others, and he says, "You need a contract specialist to get through all the rules and regulations that I need to follow as a manufacturer. All the Government contracts I see are designed as if you are a \$50 million corporation. All the rules, from the IRS to Workmans' Compensation, seem to be designed for companies which have whole divisions to deal with the paperwork and to discover exactly what the rules are." He says, "I want to comply but I also want to make a living." He is struggling.

Deb Pesto is another person I spoke to when they found out I was going to be testifying before this Committee. She is from Cleveland, Ohio. She is a self-employed physical therapist. She provides in-home treatment for the elderly and children with disabilities. Many of her patients are on Social Security and Medicare. The paperwork which must be filled out weekly in order for her patients to receive the coverage and then for Deb to get paid is about to put her under.

As you know, the Small Business Administration's Office of Advocacy has sponsored research to analyze the impact of regulations on small business and the conclusion is that small businesses face disproportionate regulatory costs. The fact is, small business is the most significant sector of the American economy, both in total number of firms and in job creation and innovation. The disproportionate regulatory burdens absorbed by small business puts a big brake on a very powerful economic engine.

If you have not read the February 26 issue of Newsweek, I hope you will. I will just read the headline. It is called "Corporate Killers", and it says, "Wall Street loves layoffs but the public is scared as hell. Is there a better way?" Well, I say, yes, there is a better way, and that better way is through small business. We are either going to be providing the jobs for those thousands of people being cut by big-time corporate America or those newly unemployed people will be trying to start their own small businesses themselves.

I just ask you all to think of the political ramifications for you. If you are the leaders who make it easier for small business to do what it does best, and that is create jobs and fuel this economy, then you will be the heroes and you will be the elected officials who have your jobs at the turn of the century.

So I ask this. How about it. Let us cut the regulations and paperwork, keep our jobs, and then we can all live happily ever after. Thank you very much.

[The joint prepared statement of Mr. George and Ms. Reed follows:]



**WRITTEN STATEMENT FOR THE SENATE SMALL BUSINESS COMMITTEE HEARINGS ON  
S. 942 - REGULATORY REFORM**

**SUBMITTED BY SCOTT GEORGE AND ROSEMARY REED,  
DELEGATES, 1995 WHITE HOUSE CONFERENCE ON SMALL BUSINESS**

**28 FEBRUARY 1996**

The legislation incorporated in S. 942 addresses many key issues raised by small business people at the 1995 White House Conference on Small Business. Regulatory reform was the focus of a number of issues that received very high vote counts from the delegates to that conference. We have been invited today to represent the delegates of that Conference.

This legislation is a significant first step in responding to the difficulties being experienced by the small business community. We have talked to many of the delegates and we strongly support this legislation. We are confident that our comments will represent the views of the vast majority of the delegates. We will offer a few minor, but important, suggestions for modification and future consideration.

**BACKGROUND**

For almost a year prior to the White House Conference on Small Business, small business owners met in state and regional conferences to develop specific resolutions regarding regulatory reform. In state after state, it was clear that delegates believed government's adversarial role with excessive regulation had limited the success of America's small businesses. Hundreds of state level resolutions, calling for strong regulatory and tort reform, were consolidated into 30+ regional resolutions and forwarded to the national conference.

Working together, delegates from across the country consolidated these 30+ regional resolutions into five strong resolutions that define a whole new approach to governmental regulation in America. Over 250 conference delegates discussed these five resolutions, added and deleted clauses, and unanimously voted to present them to the entire conference. All five resolutions received strong support. Three were in the top fifteen and the other two garnered over 1,000 votes each.

These resolutions represent nothing short of a new way of looking at regulations in America. They call for a spirit of cooperation between agencies and business, for regulations based upon sound economic and scientific evaluation as well as common sense, for sunset and reevaluation of old regulations and for tort reform that brings order out of the chaos that exists today.

Small business people at the White House Conference were not seeking to dismantle appropriate and worthwhile government regulations. We recognize that all rules are not necessarily appropriate for all categories of people or businesses. However, these rules do not have to be overbearing, unjustified on a cost-benefit basis or confrontationally enforced.

There were four White House Conference resolutions from the Regulation and Paperwork Reduction

**WRITTEN STATEMENT FOR THE SENATE SMALL BUSINESS COMMITTEE HEARINGS ON  
S. 942 - REGULATORY REFORM**

area that are being addressed by S. 942. These resolutions were on the following subjects:

- #183 Amend the Reg Flex Act related to the creation of new regulations
- #188 Re-evaluate and sunset existing regulations, simplify paperwork
- #194 Cooperative regulatory environment, no first time fines
- #369 OSHA reform

**Amend the Regulatory Flexibility Act (183)**

The Reg Flex Act needs to be strengthened and expanded to all federal agencies, including the IRS, that develop regulations for small businesses. Judicial review provides the teeth to ensure that agencies are taking small businesses into account when developing regulations. Costs benefit analysis and scientific risk assessment ensure that new regulations are worth the cost of implementation.

For example, new OSHA Bloodborne Pathogens standards were implemented for the dental health care field on March 3, 1992. OSHA estimated the cost would be \$2,784.50 per dental office per year for a total nationwide cost of over 87 million dollars. At Mid America Dental, Hearing, and Vision Center, the estimated annual cost exceeds \$100,000. Who pays this health care cost increase? Our 10,000 patients at \$10 per office visit. Even if the average cost was only \$50,000 per dental office, the annual cost of this one regulation would exceed 1.5 billion dollars. Yet, according to the CDC HIV/AIDS Prevention Report Update for December 1994, only 42 health care workers contracted HIV following occupational exposure. And, not one of these 42 people worked in the dental health care field.

Unfortunately, many well-intended laws provide only general guidance and objectives, leaving the regulatory agencies to draft the specific regulations. These agencies are pressured from those who believe they are not going far enough. And, by others who believe that they have gone overboard. The media loves to find fault and blow situations entirely out of perspective for headlines and ratings. The result is a tendency to avoid criticism. If the exercise of common sense means being criticized later, they err in the direction of eliminating that risk. The budgets and staffing levels of regulatory agencies are enhanced by growing these programs and adding regulatory enforcement requirements. Outside special interest groups, academic consultants and lobbyists make their particular objectives known to the regulatory agencies, drowning out the quiet voices of reasonable people seeking a rational process in defining and retaining regulations. For example, the IRS receives intensive input from academic theorists and from the accounting firm industry; both of which have a vested interest in making the system as complicated as possible.

When challenged, the regulatory agencies claim they are simply complying with the law. They claim they are unable to change the regulation and that our only recourse would be to seek revised legislation from the Congress, leaving the small business person with no recourse.

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Expanding the Regulatory Flexibility Act to all agencies and granting judicial review are good first steps to enabling the small business community to fight back against burdensome regulations. Thus, more agencies will give careful consideration to the impact of regulations on small business. Judicial review will, for the first time, allow small business to challenge regulations that are excessive and burdensome.

**Re-evaluate and Sunset Current Regulations, Simplify Paperwork (188)**

President Clinton, in a speech to the Conference, supported a more constructive approach by eliminating over 66,000 pages of burdensome regulations and directing federal agencies to work together with small businesses rather than in a coercive manner as exists today. Senator Dole and Speaker Gingrich pledged their support to get government off our backs, out of our lives and let small business do what it does best. Senator Kit Bond (MO) and Representative Jan Meyers (KS), chairs of Senate and House Small Business Committees respectively, pledged to implement these resolutions into legislation.

Existing regulations need to be periodically evaluated to determine if the cost of compliance is worth the benefits being received and eliminated, via sunset provisions, unless demonstrated to be worthwhile.

The delegates to the White House Conference believe that well meaning laws implemented by well meaning regulators have long passed the point of sensible and justified regulation. The Small Business Administration recently reported to Congress that the cost of regulation is over \$5000 per employee to small businesses while costing \$3400 per employee to large businesses. A 1995 Hopkins and Diversified Study showed that tax compliance cost for firms with less than 50 employees was 5% of revenue. This is more than the profit margin of many of small firms. In fact, in a survey conducted of delegates to the White House Conference, the IRS was singled out as one of the biggest and most universal burdens. For those businesses dealing with the Department of Defense, the Defense Contract Audit Agency and the Defense Contract Accounting Agency also would be near the top of their list. Their requirements add substantially to the overhead cost of every firm.

Further, this resolution was intended to simplify the language, paperwork and forms required to comply with regulations. Large companies have large staffs to review and respond. Typically, the small business owner has to squeeze the reporting requirements around the every day task of running the business.

Regulations and reporting requirements are generally developed with large businesses in mind. Proposed new regulations are published by the government in thousands of pages a year. The vast majority of small business people do not receive these documents and do not have time to read them. In most cases, the regulations simply go through the review process with only comments from large businesses and special interest groups. Small business people are not even aware the

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regulation exists until the inspector arrives.

An effort has to be started to pull back and bring more rationality into the process, across all agencies. The 1993 Executive Order #12866, Regulatory Planning and Review, was such a step. This legislation is a very important step..

### **Cooperative Regulatory Environment (194) & OSHA Reform (369)**

At the WHCSB, we heard many horror stories from small business persons about confrontational inspections over petty regulations with little scientific or economic basis. One example was the delegate whose company was fined \$7,000 for failing to have an MSDS sheet for the White-Out Correction Fluid in the receptionist's desk. According to the inspector, that was the only violation to be found; and, the inspector had to find something to justify the trip.

Resolutions #194 and 369 call for cooperation and team-work between agencies and companies. Most small business owners want a safe working environment for their co-workers. Typically, the owners know each of their co-workers and want to avoid anything that would cause harm. Small business owners understand the economic cost of occupational injuries since, in a small business, there are seldom enough trained replacements to avoid business loss when co-workers are off the job. Further, small business owners and their families typically work side-by-side with other co-workers, thus, they would want a safe working environment for all concerned.

These WHCSB resolutions also recommended that fines take into account the severity of the infraction, size and type of company, past safety record and the frequency and severity of the violations. These resolutions also recommended that proposed fines be used toward correcting the violations. There has been some progress in this area by Executive Order and by internal changes in agency policy.

The proposed legislation provides an excellent next step in accomplishing these recommendations. In particular, waiving the fine for first time violations will promote cooperation between regulators and small businesses, reduce the burden of regulations, and improve compliance within small businesses as regulations become based on common sense rather the total risk avoidance.

Either in this legislation or in another, a requirement should be established that regulations be justified by the value they provide. Congress should demand that they be justified on a scientific, risk assessment and cost benefit basis. If it is unreasonable to require this when regulations are first established, they should at least have to meet this standard after they have been in place for five years or they should be canceled.

### **Need for Legislation**

There is little incentive for regulatory agencies to implement these White House Conference

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resolutions. It increases their risk of criticism by the press and special interest groups. It potentially reduces their workload, jeopardizing their budgets, staffing and grade levels. Requiring economic or scientific justification for regulations is difficult, but not impossible. It complicates their job and adds another element that is subject to criticism.

Further, regulatory agencies have been operating in an adversarial mode for so long that no level of executive direction will suffice to change the current atmosphere of contention. Only legislation, and the means to enforce that legislation will result in the changes needed.

Agencies should recognize that small business cannot meet the same standards as large business. Small business will not even be aware of new regulations unless the regulatory agency creates a realistic and effective program to promulgate the rules and to do so in a simplified form. The Federal Register is not such a method. Congress should require a control mechanism by which business can challenge the validity and justification of regulations and to do so outside of the agency that created that regulation. And we believe the legitimate goals of government can be accomplished without an anti-business, storm trooper mentality. It is hard for a small business to compete and survive in their very competitive world. Unjustified and overbearing regulations are counter-productive and are not in the best interest of the American people.

**Suggestions for Improvements**

While we are very pleased with this legislation, we would like to offer some constructive comments for your consideration.

The definition of "substantially justified" (section 301, part G) may be an unintended backwards incentive towards reducing fines in a final settlement. Typically, regulatory agencies levy large fines to get a company's attention and headlines. Then, via negotiation, reduce those fines as the company works to correct the unsafe conditions. Agencies could avoid any penalties by not reducing fines.

Under Judicial Review (section 402-4-B), small entities should be exempt until ...corrective action has been completed (not, undertaken)...

A major concern of WHCSB delegates was that our resolutions avoid generating growth in government. We clearly want a smaller but more efficient government working with us. Therefore, the SBA Enforcement Ombudsman and administrative support for the Regional Boards should avoid any staff increases. Further, the Regional Boards are too advisory in nature; thus, much weaker than WHCSB resolutions intended.

With respect to this legislation, we recommend deletion of the requirement for development of a SBDC program to function as a comprehensive source of on-line computer access to information for small business. WHCSB Resolution #188 requested that agencies assemble information through a

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single source on all small business programs, with as much as is feasible available by on-line computer access. This is best exemplified by the U.S. Business Advisor, an internet site which branches to a large number of other sites. This web site was originally developed by the Vice President's National Performance Review. If reference to the SBDC is made, it should be related to training of small businesses in the use of the U.S. Business Advisor, or its successor.

We need to build on this initiative, not start off on a new one. We especially do not want a decentralized one. There is an important role for SBDCs to educate their local companies on how to access this source of information. They could provide a central source of networked computers for people to use that do not know how to use the internet. They can assemble copies and help people find sources of information that is not available through this on-line approach. But they do not have to be involved in the creation of the on-line information itself. Each agency should do that itself, using the standards promulgated for the U.S. Business Advisor.

### Future Considerations

Resolution #183 addressed the need to require scientific and cost benefit analysis and risk assessment for all new regulations. Resolution #188 requested sunset and reevaluation of regulations every five years, using the same standards required for new regulations. We understand that this may not be appropriate to the jurisdiction of this committee but it may be possible to add it during floor debate or to add it to another item of legislation. We understand that there is separate legislation in process on sunset requirements. The House Government Reform and Oversight Committee and the House Judiciary Committee are considering a compromise version of HR994. The Senate Judiciary Committee is considering similar legislation in S. 1346. We hope that the members of this committee will be able to use their considerable influence to impose the requirement for scientific justification, risk assessment and cost benefit analysis in that legislation, at least during sunset reviews.

For example, data from the National Safety Council (see attached) shows that the death rate per 100,000 workers has been declining on almost a straight line basis since 1940. The rate of decrease has not changed with the inception of OSHA in 1970. If the enormous cost of OSHA itself and the policies and rules in makes has not significantly impacted on worker safety statistics, the justification for the program needs to be examined. Unless there is a requirement for regulations to periodically demonstrate their effectiveness in accomplishing their original intent against some consistent objective criteria, they will live forever even when they are ineffective.

Although it probably is not within the jurisdiction of this committee, a related problem in any centralized source of data is that of equal access. For people in urban areas, this is not a major problem. Essentially all on-line services are readily and affordably available in these areas. In the years ahead, access to the internet may become critical to the survival of almost any business. But people in rural areas may be faced with long distance charges to gain access to the internet. The new atmosphere that will be created by the recent telecommunication legislation could lead to cherry



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picking of areas by telecommunications companies. As recommended in Resolution #265, the Congress needs to consider what action is appropriate to assure open and affordable access to on-line resources by rural small businesses, whether it is the internet or some other source that develops.

### Summary

In summary, the delegates to the White House Conference on Small Business asked the Congress to help establish a new and more sensible framework for establishing, revalidating and enforcing regulations and this legislation gives a bold and positive response.

This legislation is a major step forward. Several objectives of the WHCSB resolutions are clearly and positively addressed. It makes very clear the concept that small business must be considered when making and enforcing rules. It reinforces the concept that companies that are trying to meet their legitimate obligations under the rules should be given help in the interpretation and applicability of the rules, without the risk of being fined for asking. It provides for the ability to challenge unreasonable regulations in the courts and formalizes the methodology for requiring small business input to the original formulation of new regulations. It provides for more user-friendly promulgation of regulations by the requirement for Compliance Guides. The Small Business and Agriculture Enforcement Ombudsman and the Small Business Regulatory Fairness Boards are a major step forward.

We most strongly endorse this legislative initiative. On behalf of the thousands of delegates to the White House Conference and the millions of small business people that they represent, we thank you and express our appreciation. This legislation represents a follow-through on commitments made by Congressional leadership at the conference to take our resolutions seriously. You have clearly done that. Thank you.

Prepared By:  
Scott George, delegate from Missouri

and  
Rosemary Reed, delegate from the District of Columbia

Chairman BOND. Thank you very much, Ms. Reed.  
Now we turn to Mr. Holman.

**STATEMENT OF SCOTT HOLMAN, SR., CHAIR, REGULATION AND PAPERWORK IMPLEMENTATION TEAM, SMALL BUSINESS ADMINISTRATION REGION 5, WHITE HOUSE CONFERENCE ON SMALL BUSINESS, AND PRESIDENT AND CHIEF EXECUTIVE OFFICER, BAY CAST, INC., BAY CITY, MICHIGAN, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE**

Mr. HOLMAN. Thank you, Senator Bond. I was just reflecting on the last time that we met and it was at the small business press conference focusing attention on S. 343. It is good to be back to make this all happen or hopefully make it happen a little at a time here.

Mr. Chairman and members of the Committee, I am Scott Holman. I am president and CEO of Bay Cast, Incorporated, and we have a 90-employee steel foundry in Bay City, Michigan. I am also a director of the U.S. Chamber of Commerce as well as a member of the Chamber's Small Business Council and Regulatory Affairs Committee. Additionally, I was appointed as a delegate to the 1995 White House Conference on Small Business by Spence Abraham and served as the Michigan State Chair for Regulation and Paperwork.

But I am very pleased to be here today representing the Chamber, which counts among its membership over 215,000 businesses, of which 206,000 have less than 100 employees and 178,000 have less than 25 employees. We appreciate the opportunity to represent before you such a large number of fellow businessmen who struggle daily with the distraction and burdens of Federal regulations that seem to grow exponentially.

You and this Committee are to be committed for the regulatory dialog that you have encouraged with the focus exclusively on small enterprises.

Two issues are at the center of the regulatory debate. First is the Federal agency interaction with the private sector and the subsequent level and need for regulations and paperwork requirements imposed. Second is the standard of accountability to which the agencies will be held.

I would like to have you think of this from the perspective of a small business owner. Wear his shoes for just a moment. He sees this huge army of regulators with seemingly unlimited resources, figuring out ways to solve real and perceived problems with often questionable science, writing regulations that affect every aspect of his business. They are spending his money, his resources, his time, with little regard to the fact that he or she is struggling to make taking risks in the marketplace to make his enterprise profitable and survivable but is constantly distracted from his prime mission. Then on April 15, he realizes that the final burden he pays is returned to his government to pay for its regulatory habit.

Americans now spend close to \$7 billion annually for filling out forms, answering mandatory survey questions, and compiling records that the Federal Government may or may not use. The current Federal regulatory model is now adversarial, legalistic, prescriptive, penalistic, and it is a centralized command and control



system that imposes inflexible rules on an increasingly complex and diverse society backed up by the threat of civil and criminal penalties.

The high costs and marginal accomplishments of this approach have been extensively documented by a broad spectrum of policy analysts. In short, the cumulative and compounding effects of the paperwork and regulatory labyrinth have become so severe on small businesses that they cannot continue to incur these costs if they are to remain economically viable in a globally influenced marketplace.

The Chamber has conducted extensive surveys of its members, the results for which I refer to you in my written testimony. It clearly reflects the urgent need to offer greater flexibility in complying with the Federal laws and regulations, including health, safety, and environmental regulations, the use of sound science, risk assessment, and cost/benefit analyses in setting standards, fewer paperwork requirements, and the safeguarding of property rights.

In response to its members' needs, the Chamber created a Regulatory Affairs Committee, a board-level policy Committee whose objectives are to achieve strong accountability requirements, more reasonable regulations, a reduction in the number of regulations, reduced paperwork burdens, and more efficient and effective information and resource management. We are fully committed to working with this Committee and others in Congress to fulfill the common mission.

As one who intimately was involved in the 1995 White House Conference on Small Business, I am delighted to offer the support of the Chamber for the Small Business Regulatory Enforcement Fairness Act of 1996. It is, however, my fervent hope that nothing that we do to provide accountability and relief from regulatory burden shall result in the net increase of one more layer of government bureaucracy nor one more Federal employee nor one more tax dollar spent.

No one is more aware of the need for regulatory language and instructions that are readable and understandable than I. Just try working your way through a Form R, required under title 3 of the Superfund Amendments and Reauthorization Act of 1986. This form requires the tracking of a myriad of chemicals through the manufacturing process and its ultimate form and disposition.

I wish it would only take 34 hours, as estimated, per this form. Indeed, several trade organizations have even prepared compliance volumes simply to help business figure out how to comply. You may be amazed at how many chemicals may be used by a small company like mine. You can imagine the burden that we face is enormous.

Let me close by making a few comments that I have made before about the realities of running a small company and how they relate to Federal agencies and how they should cooperate. The free market system makes me brutally accountable for my decisions. The Federal regulatory infrastructure should be just as accountable, if not more so, given the role in the public trust.

I want a clean, safe, and healthy environment, not just because somebody imposed a regulation or because it is morally correct. My

employees who are just like us perform the way they feel, feel the way they perceive themselves in the context of their surroundings, so the working environment affects their performance.

We in industry have a common goal with the regulatory systems that attempt to ensure a safe workplace and a clean environment, but that system is in desperate need of improvement. The burdens for small business go beyond the direct costs of compliance. Most of us cannot afford to have a part-time staff in-house to help us comply with the myriad of Federal regulations. Therefore, we face the escalating costs of consultants and attorneys.

Are we tailoring our regulations to the actual needs out there? Which regulations are justified, those that make an appreciable difference in our lives or those that force us to jump through new hoops and piles of paperwork and consume capital and human resources with questionable results?

The foundry industry no longer finds itself competing on a regional basis. Bay Cast, my company, for example, depends on North American/European markets for a significant share of its business. Conversely, our competition both in domestic and European markets comes from China, the Czech Republic, and other countries with emerging industrial economies whose governments provide more focused support for exports.

I believe, therefore, that the proposals you address here today, as well as others that are being debated, will produce better-informed decisionmaking and begin to build the confidence of the public and their concerns are being heard and responded to. All of the regulatory reform proposals are vital to win back the confidence of small business in a regulatory system that now suffers a serious credibility gap.

Your legislation represents a pragmatic and measured attempt to correct some of the real flaws in the system without giving up the protection the public wants. I, for one, do not want to poison my workers or my neighbors or destroy the beauty of my community. I have no interest in paralyzing the regulatory system with hurdles and delays. But we need accountability and a departure from the status quo because the small business in this country can no longer afford the tremendous economic costs of distorted priorities. We have a moral obligation to face up to the tradeoffs that are part of living in this world and that are necessary in an era of scarce resources.

Mr. Chairman and members of the Committee, I appreciate this opportunity to speak to you today on such a critical topic and offer my support and that of the Chamber for this bill. Know that the Chamber and I stand ready to assist you in this important mission. I would be pleased to answer any questions that you may have.

[The prepared statement of Mr. Holman follows:]

STATEMENT  
on  
"THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996"  
for the  
SENATE COMMITTEE ON SMALL BUSINESS  
for the  
U.S. Chamber of Commerce  
by  
Scott Holman  
February 28, 1996

Mr. Chairman and members of the Committee, I am Scott Holman, President and CEO of Bay Cast, Inc., a 90-employee steel foundry in Bay City, Michigan. I am also a member of the Board of Directors of the U.S. Chamber of Commerce as well as a member of the Chamber's Small Business Council and Regulatory Affairs Committee. Additionally, I was appointed as a delegate to the 1995 White House Conference on Small Business by Senator Spencer Abraham and served as the Michigan State Chair for both the regulatory and taxation committees. I was subsequently elected as the Chair for the Region 5 implementation initiative for regulatory issues.

I am pleased to be here today representing the Chamber, which counts among its membership 215,000 businesses, 3,000 state and local chambers of commerce, 1,200 trade and professional associations, and 76 American Chambers of Commerce abroad. I would note that of the Chamber's 215,000 business members, 96 percent have fewer than 100 employees and 83 percent have fewer than 25 employees. As an organization that represents a large number of small businesses, the Chamber is pleased to have this opportunity to represent the vast majority of our membership that

struggles daily with the burdens of federal regulations. You and this Committee are to be commended for the regulatory dialogue you have encouraged, with its focus exclusively in small enterprises.

Two issues are at the center of the regulatory debate. First is federal agency interaction with the private sector and the subsequent level of and need for the regulations and paperwork requirements imposed. Second is the standard of accountability to which agencies will be held.

The cost of complying with federal regulations and paperwork burdens is skyrocketing, not just in dollars, but in time spent figuring out how to comply. Conservative estimates place the cost of federal regulations on the American economy at close to \$600 billion annually, or just under 10 percent of the gross national product. Additionally, according to the federal government's own statistics, Americans now spend close to seven billion hours annually filling out forms, answering mandatory survey questions, and compiling records that the federal government may or may not use.

Moreover, the current federal regulatory model is adversarial, legalistic, prescriptive, and penalistic. It is a centralized, "command-and-control" system that imposes inflexible rules on an increasingly complex and diverse society, backed up

by the threat of civil and criminal penalties. Indeed, the appearance is that federal regulators have unfettered and unchecked discretion when regulating, and that they are rewarded for the number of regulations they write and the number of enforcement actions they bring. The high costs and marginal accomplishments of this approach have been extensively documented by a broad spectrum of policy analysts. In short, the cumulative and compounding effects of the paperwork and regulatory labyrinth have become so severe that small businesses cannot continue to incur these costs if they are to remain economically viable.

As you are well aware, much of the 1995 legislative year was spent trying to pass comprehensive regulatory reform initiatives that would have introduced much-needed common sense and practicality into the federal rulemaking process. In addition, President Clinton announced several regulatory reform initiatives of his own which on paper sounded good, but which in reality have produced little change. Clearly, if we focus specifically on small businesses we will have greater success.

#### **FINDINGS AND INITIATIVES OF THE U.S. CHAMBER OF COMMERCE**

The Chamber's outreach to its membership, primarily its small business members, confirms the severity of the regulatory problem and drives our commitment to reform initiatives.

In preparation for the 104th Congress, the Chamber surveyed its membership to determine the issues of greatest concern to them. Out of more than 60 issues identified, unfunded mandates on state and local governments and the private sector ranked first, paperwork reduction ranked third, Occupational Safety and Health Act (OSHA) regulations ranked seventh, and regulatory flexibility for small businesses ranked ninth. It is interesting to note that all of the top ten issues dealt with getting the federal government off the backs of businesses. (Number two was welfare reform, number four was Social Security solvency, number five was balancing the budget, number six was reforming the budget process, number eight was civil justice reform, and number ten was opposition to mandated health benefits.) These results are a strong indicator that regulatory burdens continue to cripple businesses.

Also, in early 1995, the Chamber sent out a one-page survey to many of the participants in its Grassroots Action Information Network (GAIN), asking them to respond concerning regulatory burdens they face. Some of the findings were telling. Sixty-seven percent of the respondents said that federal regulations required them to purchase additional equipment. Seventy percent had to modify their facilities. Seventy-two percent spend up to 25 hours each month filling out government-required forms and complying with other record-keeping and paperwork burdens. (Eleven percent spent from 26 to 50 hours each month and fourteen

percent spent more than 50 hours.) Seventy-four percent reported that the cost of lost time spent completing paperwork was medium to high, and 61 percent said the costs associated with the purchase of additional equipment was medium to high. These responses are especially enlightening given that 65 percent of the respondents had 50 or fewer employees.

Finally, the Chamber is just completing a more comprehensive survey on regulatory impacts. We created a random research pool of approximately 8,200 of our GAIN members to ensure statistical validity and sought more detailed information in the areas of labor and employee benefits issues and environment and natural resource issues. We sought information specifically on: 1) the degree of regulatory burden businesses face in these areas; 2) the specific substantive areas of greatest concern to them that need reform; and 3) business views on various regulatory process reforms they would like to see occur. The Chamber believes that the results of this effort will be very valuable in the upcoming debates on regulatory reform and will be delighted to share the findings with this Committee.

The input the Chamber has received from its members clearly indicates the urgent need to offer greater flexibility in complying with federal laws and regulations including health, safety, and environmental regulations, the use of sound science and risk assessment in setting standards, fewer paperwork



requirements, and the safeguarding of property rights. Our members also are demanding that the system be an accountable one where all parties are responsible for the consequences of their actions. Finally, the Chamber's membership is calling on federal agencies to help them understand their obligations and be responsive to their needs.

In response to its members' needs, the Chamber created the Regulatory Affairs Committee, a board-level policy committee whose mission is to ensure a sound federal regulatory infrastructure that is fair, and conducive to business growth and job creation, and that does not subject industry or the public to unreasonable regulatory costs and burdens. It also exists to ensure that federal regulators comply with appropriate Executive Orders and administrative laws governing regulatory review and information-collection activities. The objectives of the Committee are to achieve:

- \* A strengthening of the federal regulatory process with strong accountability requirements, resulting in more effective rulemaking and greater, less expensive compliance by regulated entities;
- \* More reasonable regulations;
- \* An overall reduction in the number of regulations;
- \* Reduced paperwork burdens on businesses and the public; and
- \* More efficient and effective information and resource management.

I am pleased to say that we reached two very important milestones in this effort. Initiatives to provide relief from unfunded federal mandates and greater control over the paperwork

process were both signed into law in 1995. These victories, however, must be tempered with our inability to achieve greater reforms to the system. It is in that vein that we are fully committed to working with this Committee and others in Congress to fulfill our common mission.

**THE "SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996"**

As one who was intimately involved in the 1995 White House Conference on Small Business, I am delighted to offer the support of the Chamber for the "Small Business Regulatory Enforcement Fairness Act of 1996." My one fear is that this legislation provides such a practical approach to many of the problems small businesses face from federal regulations that it may be doomed in this environment where common sense rarely prevails.

I will not attempt a line-by-line analysis of the legislation at this time. I will leave the minutiae to the Chamber's staff of experts. Rather, I would like to make a few general comments about several of the provisions.

No one is more aware of the need for regulatory language and instructions that are readable and understandable than I. Just try working your way through a Form R required under Title III of the Superfund Amendments and Reauthorization Act of 1986! This form is required for each chemical that is used in a facility and

consumes an estimated 34 hours per form. Indeed, several trade organizations have even prepared compliance volumes simply to help businesses figure out how to comply. When you consider that many small companies like mine must report on several chemicals, you can imagine that the burden we face is enormous.

I am also aware of the value of compliance manuals. The compliance materials developed by various federal agencies for the Americans With Disabilities Act several years ago have undoubtedly saved many the expense of lawyers and consultants. However, in this time of shrinking agency budgets and attempts to impose a stricter process by which rules are developed, we need to be sensitive to placing unrealistic time restrictions on the agencies for meeting their obligations. We should not give our opponents the opening to claim that we are simply trying to hog tie the agencies when we all know that is not our intent.

With respect to requiring Small Business Development Centers to serve as "one-stop shops" for regulatory compliance information, this is a key idea. However, we need to be sure that we are coordinating all such existing programs before we expend scarce resources duplicating efforts. For example, Section 507 of the Clean Air Act amendments of 1990 required each state to establish a small business technical assistance program. These programs are now in place as a source of information for compliance with the Clean Air Act and in most instances are

working extremely well. In fact, many states have taken these programs a step further and expanded the technical assistance programs to also provide compliance information on all environmental regulations, and the reports we get indicate that these initiative are highly successful. I would also note that, when creating new public policies, we should always be mindful of private sector resources and seek ways to encourage and enhance private sector business opportunities as opposed to strengthening government entities.

On a final note, I would like to re-emphasize the Chamber's continued commitment of the Chamber to strengthening the Regulatory Flexibility Act of 1980 (RFA). It is and will continue to be a priority issue for us until we reach success. The Chamber believes, however, that a key reason for our past failure on this issue has been that too many other initiatives are attached in hopes that support for strengthening regulatory flexibility analyses will pull support for other more controversial issues. We fully support a comprehensive approach to regulatory reform. A vast majority of our small business members have told us, however, that a key priority for them is amendments to the RFA to ensure federal agency accountability to small businesses. We must then, in good conscience, raise the issue of potentially losing on the RFA because of the more comprehensive approach of your legislation. The strong bipartisan votes we have had on strengthening the RFA demonstrate

that this is one objective we could reach with little pain. However, we all know that our opponents will use their formidable resources to challenge some of the other provisions before us today. Therefore, while we support this legislation and will follow your lead, Mr. Chairman, and that of this Committee, we encourage your serious attention to this concern.

#### CONCLUSION

Let me close by making a few comments that I have made before about how the realities of running a small company relate to how federal agencies can and should operate. The free market system makes me brutally accountable for my decisions. The federal regulatory infrastructure should be just as accountable if not more so given their role with the public trust. I want a clean, safe, and healthy environment not just because somebody imposed a regulation, or even because it is morally correct. My employees, who are just like us, perform the way they feel, feel the way they perceive themselves, and perceive themselves in the context of their surroundings. The working environment affects their performance.

We in industry have a common goal with the regulatory systems that attempt to ensure a safe workplace or a clean environment. But that system is in desperate need of improvement. The burdens for small business go way beyond the

direct costs of compliance. Most of us cannot afford to have full or even part-time staff in-house to help us comply with the myriad of federal regulations. Therefore, we face escalating costs of consultants and attorneys. Are we tailoring our regulations to the actual needs out there? Which regulations are justified -- those that make an appreciable difference in our lives, or those that force us to jump through new hoops and pile up paper, and consume capital and human resources with questionable results?

The foundry industry no longer finds itself competing on a regional basis. Bay Cast, for example, depends on a North American and European market for a significant share of its business. Conversely, our competition both in our domestic and European markets comes from China, the Czech Republic, and other countries with emerging industrial economies whose governments provide more focused support for exports.

I believe, therefore, that the proposals you address here today, as well as others that are being debated, will produce better-informed decision-making and begin to build the confidence of the public that their concerns are being heard and responded to. All of the regulatory reform proposals are vital to win back the confidence of small business in a regulatory system that now suffers from a serious credibility gap.



Your legislation represents a pragmatic and measured attempt to correct some of the real flaws in our system without giving up the protection the public wants. I for one do not want to poison my workers or my neighbors or destroy the beauty of my community. And I have no interest in paralyzing our regulatory system with hurdles and delays.

But we need accountability and a departure from the status quo because small business in this country can no longer afford the tremendous economic costs of distorted priorities. We have a moral obligation to face up to the trade-offs that are part of living in this world, and that are necessary in an era of scarce resources.

Mr. Chairman and members of this Committee, I appreciate this opportunity to speak to you today on a critical topic. The Chamber and I stand ready to assist you on this important mission.

I would be pleased to answer any questions you may have.

Chairman BOND. Thank you very much, Mr. Holman.

Let me go back to something that was raised in the discussion I had with Senator Levin. Let me begin with you, Mr. George. We talked about trying to make sure that regulators treat small business fairly and we talked about a proposal to set up an ombudsman system. The initial proposal in this measure was in the Small Business Administration. Senator Levin would propose to have each agency set up an ombudsman.

Do you see a need for an ombudsman? Do you think excessive zeal on the behalf of some examiners and inspectors is a problem? If one is needed, and that question I would leave as open to you, where should that person be lodged?

Mr. GEORGE. Where should the person be lodged? Rating the regulators basically is one of the things an ombudsman does and it helps us get these resolved. So someone like that would be very beneficial. A single source, and that is something that we talked about on computer information, a single source in this thing would work well, too, that there is someplace that small business knows that they can go and get some help.

The legislation that you are proposing is a design and intent and will help change the culture from the top down, but sometimes that does not percolate all the way through and there needs to be some bottom-up.

Chairman BOND. Do you have any feelings about whether the ombudsman ought to be agency by agency, or when you were talking about single source, do you mean one stop at the SBA? Do you have a strong feeling one way or the other?

Mr. GEORGE. My personal preference is always one stop, SBA. It is like having a personal banker, somewhere I can go and get taken care of.

Chairman BOND. Ms. Reed, what would your views be on that question?

Ms. REED. I cannot second that enough. I feel like it is very important to have a one-stop shop. One of the issues, of course, is the independent contractor issue that we all face in our business. It has put out of business two closed production firms in Minneapolis this year alone because they got fined and they did not know. They did not understand all 20 rules.

If there was one centralized location, I would vote for the SBA certainly. They have been very helpful and very cooperative to all of us and I think that if there was a central location where a small business could call, a 1-800 number, through the Internet, any means to just get that central source of information as to how we deal with those issues like independent contractors, how to deal with an IRS audit, which I am going through right now. It is not a pleasant experience.

It would really be helpful if I just knew some of the rules and regulations that they are suddenly saying, well, ignorance is not an excuse. I did not know. So we are working with them very hard, but I have to have a bookkeeper in a couple of times a week just to make all that happen.

Chairman BOND. Again, getting information is vitally important. The staff here at the Committee tried surfing the Internet when it went to the OSHA regulations. They found they were referred by

section number in the Code of Federal Regulations. But even with all the resources at their disposal and the crosswalks, the staff tells me it is not up to standards where the information is readily accessible.

I think the ombudsman's purpose, though, would be not so much to offer advice. That pretty much has to come from the agency itself, and we hope that they get common sense English. But the question is if they are overly zealous examiners, there needs to be a place.

Mr. Holman, you said not one single more employee of the Federal Government and, by gosh, we have just proposed another single employee. Are we going down the wrong track at the right time?

Mr. HOLMAN. I am ready for that. I said the net increase in employees, and that means that some of this legislation—

Chairman BOND. So we fire somebody else?

Mr. HOLMAN. Some of this legislation is going to result in less government, fewer Federal employees, and that does not mean that we cannot provide some help even with a net decrease in employees and money being spent and help these small businesses work through this labyrinth of regulations.

If I might add, it cannot be in the agency. It has to be outside the agency. There will not be a person that will go in there.

Chairman BOND. Why does it have to be outside?

Mr. HOLMAN. The intimidation factor.

Chairman BOND. Pardon?

Mr. HOLMAN. The perceived intimidation factor of going to that agency and asking questions that you might ask otherwise on a no-name basis. To walk in there and say, I am the Government from this agency, and I am going to help you. It is not going to fly with a lot of businessmen.

Chairman BOND. Thank you very much.

Now it is my pleasure to turn for an opening statement and questions, if he would like, to our ranking member, Senator Bumpers. Senator, thank you for joining us.

#### **OPENING STATEMENT OF THE HONORABLE DALE BUMPERS, RANKING MINORITY MEMBER, COMMITTEE ON SMALL BUSINESS AND A UNITED STATES SENATOR FROM ARKANSAS**

Senator BUMPERS. Mr. Chairman, let me say first that I want to apologize for being late for a very important hearing, and second to commend you for this proposal. Senator Domenici, I know, has been in the vanguard of this. Your proposals here, I think make eminent good sense. I am not at this point a cosponsor because I am not totally comfortable with it, but I hope I will be by the end of next week because everything I see about it makes eminent good sense.

Let me just make one observation about the Reg Flex bill, which, I guess, when did we pass it, 1980?

Chairman BOND. Yes, 1980.

Senator BUMPERS. The idea was good but it just simply has not worked. One of the reasons it has not worked is because the agencies have not really seen fit to make it work. I am not being hyper-

critical of the agencies. They all work for a living and most of them, I think, are well intentioned.

Senator Bond, back in the good old days when you and I were running our respective States, I used to propose legislation periodically to allow people in the industry to participate in the regulatory process. We had a savings and loan commission which was made up mostly of the people in the savings and loan business. It was the same way with banking, the same way with alcoholic beverage. We had a commission for everything and we used to let them pick somebody from the private sector to come in and observe the drafting of the regulations and the conversation.

I was so carried away with that, frankly, that when I came to the Senate, I introduced a bill to reverse the burden of proof on regulations. As you all know, there is a presumption of the validity of every regulation. The presumption is that this regulation is in keeping with what Congress intended and we all know that more often than not, the regulation goes way beyond what Congress intended.

We have been culpable, because we often sit back when you-know-what hits the fan. We pass a one-line bill, we turn it over to the bureaucrats, and the first thing you know, you have 1,000 pages of regulations. So when the private sector starts to complain, we say, "Oh, we never intended that."

But we do not go to the private sector. I mean, it is a cop-out on our part, frankly, that we do not give the private sector a chance to defend themselves. On the contrary, the courts of this country have consistently said there is a presumption that these regulations are written by the experts and we therefore defer to the expertise of the regulation writers.

So I offered an amendment here over a period of 3 or 4 years, got it adopted in 1980 with the help of a very few Democrats and virtually all the Republicans that said, in the future, there shall be no presumption of validity.

It said, in the future, if somebody comes into your plant and says your fire extinguisher is 56 inches off the floor, yet by regulation it cannot be more than 54 inches and therefore your fine will be \$100, the guy could say, "Well, the hell with you. I am not going to pay that. That is too silly to even talk about."

So the first thing you know, you are in court and you have a \$10,000 attorney fee over a \$100 fine. When you go into court, this guy with the fire extinguisher has to prove that Congress did not intend for him to pay a fine because of that two-inch differential. First of all, they ought to just say, change this, if it is important.

One negative thing about the Republicans, Senator Bond, is that after I passed it in 1980, I went over to the White House in 1981 and spent 30 minutes with the then-President telling him how important this was. As a matter of fact, it was in the Republican platform in 1980. But I did not get enough votes to count the next time I offered it.

I recognize that that amendment was pretty draconian. It could have caused a lot of havoc. But I was just trying to get people's attention with it, and I must say I think Senator Feingold has got a great amendment. I think the ombudsman amendment is a good one. I think that is a provision that if we have to add another em-

ployee, we ought to add another employee. But I am not at all sure we ought not to bring the private sector in even in a more draconian way, especially in some of these agencies.

I see my time is up, Mr. Chairman.

Chairman BOND. Would you care to ask any questions?

Senator BUMPERS. No, I will let that go. Mr. Chairman, I would like permission to insert my opening remarks in the record.

Chairman BOND. We will be happy to include those as presented.

Senator BUMPERS. Thank you.

[The prepared statement of Senator Bumpers follows:]

PREPARED STATEMENT OF SENATOR DALE BUMPERS  
COMMITTEE ON SMALL BUSINESS  
FEBRUARY 28, 1996

Let me commend the Chairman and his staff for their very even-handed approach in putting together today's hearing and the draft substitute for S. 942 and S. 917 which is before us. Regulatory reform remains a major concern of small business owners. Legislation is long overdue, but previous Senate attempts to tackle this issue have been less than successful because they tried to do much more than the stated objective--ensuring fairness in the rulemaking process and in enforcement actions. Today's draft bill cuts to the heart of true small business concerns and leaves aside the big business issues which dominated the debate over S. 343.

This Committee is not about to gut the Clean Air Act, or the Clean Water Act or any other health and safety legislation, and no one can accuse us of doing so if we truly reflect the concerns of the small business constituency. The fact is that this country now has in law policies which clearly are intended to protect the interests of small business owners and employees, including the Regulatory Flexibility Act and the Equal Access to Justice Act -- both of which are results of the 1980 White House Conference on Small Business. There is nothing wrong with the basic premise of either of these Acts; the trouble is that they do not work as well as they should. Our time is better spent in remedying the shortcomings of these good policies than in trying to rewrite the entire Administrative Procedures Act which is beyond our jurisdiction in any event.

Senator Feingold had an excellent amendment on the Equal Access to Justice Act which was put into a flawed bill earlier in this Congress, and I am happy to see this Committee try and revive his work today. Senators Bond, Domenici and others have also introduced bills which have merit and which are included, with some changes, in the draft substitute which today's witnesses have been asked to comment on. I look forward to their testimony and I thank each of them for taking time to be with us today.



Chairman BOND. Senator, you reminded me one of many controversial things that we did when I was Governor of Missouri, we decided to bust up the tight little groups that had controlled all of the industry-specific or profession-specific licensure practice groups and we provided legislation for the Governor to appoint a citizen member. You talk about a holy war, we had a holy war to get that law through. But once we started appointing citizen members, I think that most people would say that it changed the perspective of that regulatory body from being just taking care of the particular profession to one that looked more at how the profession served the public.

I think while it was rejected, challenged at first, having the participation of the public at large made a significant difference. This is kind of going the other way. This is having an opportunity in Senator Domenici's provision for somebody from the regulated industry to participate in the process.

Senator BUMPERS. Senator Bond, on that point, one of the biggest fights I had along that line was in the mobile home industry. One of the regulations was, should mobile homes have to be staked down? Should they be tied down?

Chairman BOND. I went through that.

Senator BUMPERS. Did you? We wound up tying them down just because we are a tornado State and in the spring of the year, if you have a mobile home that is not really fairly secure, you might lose it. I had to mediate that proposition, but that is the kind of thing we got into.

When some guy in the industry can say, "Look, you are imposing a burden on us that is not workable and is extremely burdensome" then the regulator does not know the first thing about that industry. If you do not have somebody there that does, you are going to wind up with the kind of regulations that drive people crazy.

Chairman BOND. Thank you very much, Senator Bumpers.

Senator Burns, do you have some questions?

Senator BURNS. I would just footnote what our good friend from Arkansas said. In my hearing up there on logging, they prescribed a pair of boots—

Senator BUMPERS. That is different. We do not want to talk about logging.

[Laughter.]

Senator BURNS. Let us talk about logging. They prescribed boots to wear in the timber and they cost quite a lot and the boot was not even on the market yet, so everybody was going to get fined.

I just want to ask a question of these folks who have come here today not to listen to us talk, but has anyone done an analysis on your different businesses on a percentage of the money you spend on compliance, of your income or your gross income? Have you ever analyzed in your business what your cost of compliance is as a percentage of your income?

Mr. GEORGE. I would be scared to.

Senator BURNS. You do not know and you do not want to know.

Mr. GEORGE. I am not sure I want to know.

Senator BURNS. That is the only question I have. I was interested in—

Chairman BOND. You said \$100,000 on the one, the blood pathogens.

Mr. GEORGE. The \$100,000, just to give that as an example, the \$100,000 in particular for the dental alone represents about 7 percent of gross.

Senator BURNS. I really did not know what you were grossing. I do not care about how much you gross, but I thought some way or other you have to have some sort of an idea on the percentage of your gross what it costs you to comply.

Now, I realize there are some costs on environmental laws, and we understand that we have those costs. On the common sense things that we have to do to provide a safe workplace, I think by far the majority of business people are willing to make those outlays. They do not have to be told. You do not have to have somebody there with a yardstick pecking you on the hands all the time to do certain things.

Mr. Holman, did you want to respond?

Mr. HOLMAN. Two things. No. 1, I think the Chamber has, and I refer to the surveys in the written report that I have. Our survey will address that very issue and will have some hard numbers for you to look at and they will be available fairly soon. They are being compiled now.

Second of all, as an owner of a foundry, I can tell you that part of that cost is not just the consultants, the lawyers, and the time that you put into filling out reports and so forth but it is a very, very significant amount of capital investment that does not produce one more casting that we are required to spend and there is a lot more on the horizon for us.

Senator BURNS. Those are the only questions I have.

Chairman BOND. Ms. Reed, do you have a response?

Ms. REED. This is not a percentage particularly, but just to let you know, for us to comply with IRS regulations and all of those accompanying, we have to keep a guy on retainer. He comes to one meeting a month and we pay him \$500 or \$600 a month—correct me if I am wrong—just to come and make sure that we are within the rules and that takes a big bite. That could be paying somebody or buying office supplies or whatever to just make sure that we are complying with the IRS rules, and it is pretty tough.

Senator BURNS. That is all I have.

Chairman BOND. Let me ask, it is rather controversial but we are proposing to make the IRS subject to Regulatory Flex. Do you have a view on that? May I start with Mr. George?

Ms. REED. Go ahead.

Mr. GEORGE. Yes, I have a view on that. How much time do we have?

[Laughter.]

Mr. GEORGE. No, the IRS does need to be included. The Reg Flex Act needs to be amended to include the IRS. A lot of what the rules and regulations that they come to us with, they are an unfunded mandate. The quarterly—it used to be monthly and now it is quarterly—information that we gather and spend in our own business, my wife is the payroll manager and several days on this periodic basis she just disappears. She says, I cannot talk to you. I am working on all these IRS rules and regulations and forms. What

she is doing is collecting all the statistics for them and balancing them.

There is a tremendous amount of cost in any business to comply with the very precise reporting requirements that they have. When you challenge them on it, they say, well, we are just complying with the law. Get the law changed.

Chairman BOND. Ms. Reed, was this a specific recommendation of the White House Conference on Small Business, to include the IRS in Reg Flex?

Ms. REED. Absolutely. We feel very strongly that that is so important, because like they always say, and I ditto everything that Mr. George has said, we just comply with the law. We do not make the laws. That has been the standard answer that we always receive and so we are here to say, let us change it. Let us put them under that Reg Flex Act and make them kind of play by the rules like everybody else has to.

Chairman BOND. Mr. Holman.

Mr. HOLMAN. I think I can say that our Small Business Council of the U.S. Chamber wholeheartedly agrees with the thinking of the White House Conference on Small Business and that is absolutely in agreement with these two, that they must be included in this Reg Flex Act.

Chairman BOND. I think without being directly in support of that position, I would cite one of my favorite authorities, Dave Barry, who in the recent *Washington Post* did a question and answer. The question is, how is the Internal Revenue Service coming along in its mission to develop a tax form so scary that merely reading it will cause the ordinary taxpayer's brain to explode? The answer is, extremely well. The latest effort is titled "Separate limitation loss allocations and other adjustments necessary to determine numerators of limitation fractions year-end characterization balances and overall foreign loss account balances."

[Laughter.]

Chairman BOND. Question, what do the IRS instructions for this form state about line one? Answer, they state, "be sure to consider on this line the possible interplay between the separate limitation losses and any net operating losses or net capital losses of which they may be a part." With that helpful information—

[Laughter.]

Senator BUMPERS. Senator Bond, I think this is impossible. It is an interesting thing, the discourse that has gone on around here for years about making English the official language.

[Laughter.]

Senator BUMPERS. I do not mind telling you I have always thought that is sort of foolish. I guess there are people out there that think somebody is trying to impose German or Spanish or something else on us. I do not know what the English language thing is all about, but I am tempted to support it if it will help regulation writers or the memo writers in writing English. English is becoming a lost art in this country, I am convinced of that.

Senator BURNS. I am living proof of it.

Senator BUMPERS. But on a more serious note, your bill provides for a readable, understandable set of explanations for any regulations that might be like the one Dave Barry referred to here. I

think that is a really good step to require these people to say, "Look, what does this mean? You refer to paragraph C(a)(ii) and so on. What are you talking about?" I think it would be good to give a little guidance on that. It is a game of "gotcha" the way it works right now.

That is all I have to say, Mr. Chairman.

Chairman BOND. Thank you very much, Senator. I think there may be a message in here, also, about having us one of these days getting around to trying to simplify the tax code so we can start over again.

Let me thank the members of this panel. We very much appreciate your testimony. As I said, we will keep the record open and if there are further questions that members of the Committee have or specifics, we may ask you to respond in writing. If you have thoughts on the particular items that we have in the bill, the way that we have had it set up, please let us know as soon as possible because I think we may have an opportunity sooner rather than later to do something on this.

Again, thanks for your service, your ongoing efforts and your appearance here today on behalf of small business.

Mr. GEORGE. Thank you, Mr. Chairman.

Ms. REED. Thank you.

Mr. HOLMAN. Thank you.

Chairman BOND. Now I am pleased to call panel No. 2. Mr. Kent P. Swanson is president of Nurses Available, Inc., of Towson, Maryland. He is appearing on behalf of the National Federation of Independent Business.

Dr. VICTOR N. Tucci is president of Three Rivers Health and Safety, Inc., of Pittsburgh, Pennsylvania, and a member of the Board of Trustees and chairman of the Regulation and Paperwork Committee of National Small Business United.

Mr. H. Daniel Pincus is president of HDP Industries of Hilton Head, South Carolina, and the first vice president of the National Association of Homebuilders.

Ms. Wendy Lechner is the legislative director of the Printing Industries of American, Inc., in Alexandria, Virginia, on behalf of the Small Business Legislative Council.

Mr. James Morrison is a senior policy advisor of the National Association for the Self-Employed of Washington, D.C.

Let us begin with Mr. Swanson.

**STATEMENT OF KENT P. SWANSON, PRESIDENT, NURSES AVAILABLE, INC., TOWSON, MARYLAND, ON BEHALF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, D.C.**

Mr. SWANSON. Mr. Chairman, Senators, my name is Kent Swanson. I am president of Nurses Available, Inc. We are located in Towson, Maryland. I also served as a delegate to the White House Conference on Small Business.

I am here today to speak on behalf of the National Federation of Independent Business. NFIB is the Nation's largest small business advocacy organization, representing more than 600,000 small business owners in all 50 States and the District of Columbia. The typical NFIB member employs five people and grosses \$250,000 an-



nual sales. NFIB's membership mirrors the Nation's industry breakdown, with a majority of its members in the service and retail sectors.

Thank you, Mr. Chairman, for allowing NFIB an opportunity to testify today on the Small Business Regulatory Enforcement Fairness Act of 1996 because strengthening the Regulatory Flexibility Act has long been one of NFIB's top priorities. In addition, NFIB supports implementing many of the other recommendations from the White House Conference on Small Business into law. I would like to ask that my written testimony be submitted for the record.

Chairman BOND. It will be accepted in full. Thank you, sir.

Mr. SWANSON. Thank you. As a small business person, I am aware of the great anxiety in this country over the creation of jobs. I would like to think that I do something to help that anxiety. In fact, small business employs 53 percent of the work force in this country but small business is stifled in its attempts to grow because of the nonproductive paperwork and excessive regulation heaped upon it. Government cannot create jobs. Only business can create jobs. The burden of regulations and paperwork falls disproportionately on the very people who we rely upon to create jobs, small business owners.

According to a 1995 study done by Thomas Hopkins for the Small Business Administration, small businesses spend up to 80 percent more per employee in complying with Federal regulations than big companies. This same study concluded that while small business employs 53 percent of the work force, they bear 67 percent of businesses' total regulatory expenses.

People go into business for themselves because they believe there is an opportunity to provide a better service or product and hopefully make a decent living at the same time. I want to spend my time doing what I know best and that is running my business, not spending my time filling out this and that form. Unfortunately, the bureaucrats do not understand this point.

An indication of the avalanche of regulation is the number of pages in the *Federal Register*. I received the *Federal Register* for 1 year. When the year was up, the volumes reached a height of 9 feet. How can a small business keep up with the massive volume of regulations?

There are many things that can be done to ease the burden of regulations that are placed on backs of small business. The implementation of the recommendations of the White House Conference on Small Business is a good place to start. The Small Business Regulatory Enforcement Fairness Act proposed by Senator Bond addresses many of the regulation and paperwork issues in the Conference's final 60 recommendations.

The cornerstone of Senator Bond's legislation is the strengthening of the Regulatory Flexibility Act of 1980. As this Committee knows, the Regulatory Flexibility Act is not working. Under the law, regulators are supposed to analyze the impact of regulations and to fit the regulatory requirements to the scale of the business. Unfortunately, many bureaucrats ignore this provision because they know it cannot be legally challenged in court. The Internal Revenue Service is one agency who thinks it should be exempt from considering the impact on small business. I disagree.

The bill repeals a prohibition on judicial review. This concept has had broad bipartisan support from President Clinton, both Democrats and Republicans in the House and the Senate, and the White House Conference on Small Business.

Another provision of the Regulatory Flexibility section of this bill which is important states that if an agency does not comply with the Reg Flex analysis and the agency is successfully challenged in court, the court must put a hold on the regulation until the agency complies with the intent of the Reg Flex Act. This provision will save small business owners money that might have been spent complying with regulations that were not properly issued.

In the 103d Congress, both Houses of Congress overwhelmingly approved legislation removing the prohibition of judicial review from the Reg Flex Act. However, it never reached the President's desk. The time is now for this important reform to become law.

This bill also attempts to change the adversarial relationship which currently exists between the Federal agencies and small business owners. Currently, the regulators and bureaucrats enforcing the regulation, whether it is OSHA, the Wage and Hour Division of the Department of Labor, or the IRS, presume the employer is guilty and must prove his innocence. The portion of the bill which allows a first instance violation waiver and an abatement period while a small business corrects the violation within a reasonable period of time provides a spirit of cooperation with small business instead of the "out to get you" mentality that exists now.

However, this provision only affects OSHA and EPA. The White House Conference recommended that all agencies provide a cooperative consulting regulatory environment. This provision should include all agencies.

The bill also allows small businesses to recover their expenses and legal fees from the Government when regulators make excessive demands for fines or penalties that cannot be sustained in court. Often small business owners are blackmailed into paying the fine because they cannot afford to go to court and fight the Government and its endless resources even if they know they are right.

Mr. Chairman, small business owners want to comply with sensible regulations and provide safe workplaces for our employees, but excessive and burdensome regulations take business owners away from what they do best—running their business, creating jobs, and providing for their families. Your legislation is definitely a step in the right direction and we hope that some sensible small business regulatory reforms may finally become a reality. Thank you.

[The prepared statement of Mr. Swanson follows:]



STATEMENT OF  
KENT SWANSON  
PRESIDENT OF NURSES AVAILABLE, INC.  
ON BEHALF OF THE  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS (NFIB)

Mr. Chairman, my name is Kent Swanson, President of Nurses Available Inc. in Towson, Maryland, speaking on behalf of the National Federation of Independent Business (NFIB) -- of which I am a member. I served as a delegate to the 1995 White House Conference on Small Business. NFIB is the nation's largest small business advocacy organization, representing more than 600,000 small business owners in all 50 states and the District of Columbia. The typical NFIB member employs five people and grosses \$250,000 in annual sales. NFIB's membership mirrors the nation's industry breakdown with a majority of its members in the service and retail sectors.

I want to thank you, Mr. Chairman, for having me here today to discuss one of the most frustrating and aggravating problems facing small business owners -- government regulation, paperwork, and red tape. I want to commend you on holding this hearing on S. 942, The Small Business Regulatory Enforcement Fairness Act of 1996. Paperwork Reduction and Regulatory Reform Recommendations. I would like to share some information about the composition of the business community and some demographics of small business owners.

First, it is important to look at the business community as a whole. One inaccurate perception in this county is that all business is big business. This is not correct. There are six million establishments in the United States today. Of those six million, 60 percent of them employ 4 employees or fewer, and 94 percent employ fewer than 50 employees. These figures illustrate a fact that is sometimes lost during debates on the impact of certain legislation and regulations -- small business by pure volume dominates our country's economy.

Another mistaken perception is that a small business is a small version of a big business. Nothing could be further from the truth. For example, one-half of small business owners start their business with less than \$20,000, most of which is from personal or family savings. Most small business owners do not earn a lot of money (40 percent of NFIB members earn less than \$40,000); they survive on cash flow, not profitability. Start-up small businesses are the most vulnerable. Of the 800,000 to 900,000 businesses that start each year, half will be out of business within five years. Many small business owners will tell you that the burden of regulation has much to do with whether they survive or perish. While it is rough going at the start, small businesses are the major job generators in this county. From 1988 to 1990 small business with fewer than 20 employees accounted for 4.1 million net new jobs, while large firms with more than 500 employees lost 501,000 net jobs.

Many in Washington have noted the absence of a consensus on a great number of issues facing this country. But there is growing bipartisan agreement about a phenomena that is taking place in America's small business sector - the burden created by regulation falls predominantly and disproportionately on the very people who we rely upon to create jobs, small business owners. A 1995 Small Business Administration study showed that small businesses spend up to 80 percent more per employee in complying with federal regulations than big companies.

To that end, I would like to focus on two topics today. First, I will describe to the Committee the frustration small business owners face dealing with regulations. Second, I will give NFIB comments on draft legislation to

strengthen the Regulatory Flexibility Act and codify other White House Conference recommendations.

### The Costs of Regulations

Small business owners across this country are being trampled by the costs and burdens associated with regulations. The evidence is abundant and also easily convincing. NFIB has gathered it from its own research, others in Washington researching this issues, and most importantly from individual members who are struggling to comply with the federal government's web of regulations and paperwork requirements.

The NFIB Education Foundation, NFIB's research arm, published in 1992 an extensive survey entitled "Small Business Problems and Priorities." It looked at and ranked the top 75 problems facing small business. Problems relating to regulation and government paperwork were the fastest rising area of concern in the entire survey. In the most recent data available from the NFIB Education Foundation's monthly "Small Business Economic Trends," taxes and regulations were the top problems facing small businesses.

Another NFIB Education Foundation study ("New Business in America") clearly illustrates the impact regulations have on new businesses, which create about one-third of the new jobs in the economy. The study found that of all the challenges faced by a new business, owners are least prepared to deal with government regulations and red tape, and are generally surprised by the extent to which government plays a role in their business.

When looking at the data, it is easy to see why regulations are the fastest growing concern to small business owners. According to studies done by Thomas Hopkins of the Rochester Institute of Technology, William G. Laffer III and Nancy Bord of the Heritage Foundation, the direct costs of regulatory compliance to businesses that are associated with regulatory compliance are somewhere in the range of \$500 billion to \$800 billion dollars per year.

The hidden tax of complying with regulation is no less a tax than any other government levy. And when it comes to businesses, this hidden tax is regressive; it hits the "little guy" the hardest. According to a 1995 study by Thomas Hopkins, done for the SBA, small businesses employ 53 percent of the business workforce but bear 67 percent of business's total regulatory expenses. It also concluded small companies spent a total of \$265 billion complying with federal regulations in 1992, while large companies spent \$120 billion.

There are several reasons why smaller businesses bear a heavier regulatory burden than larger businesses. One reason has to do with the fixed cost aspect of much regulation. Fixed costs are independent of output, i.e., any company affected by the regulation pays the same fixed cost.

This is a technical explanation, but simply put, small business because of economies of scale is not equipped to deal with many federal regulations. Walk into any small business and look for the accounting department, the legal counsel, or the human resources division. You will not find them.

Unfortunately, the case I just made has never been understood by bureaucrats. The avalanche of regulation continues to pummel the small business owner. As an indication, there were 64,194 pages in the Federal Register in 1994, this is compared to 44,812 pages in 1986 -- an increase of 20,102 pages. Just remember how small the print is on each page of the Federal Register and one can begin to conceptualize the burden of the regulatory avalanche.

## The Need to Strengthen the Regulatory Flexibility Act

There are many things that can be done to ease the burden of regulations that are placed on the backs of small businesses. A great place to start and the major aspect of the legislation which is the subject of today's hearing is to strengthen the Regulatory Flexibility Act of 1980.

As this Committee knows, the Regulatory Flexibility Act is not protecting small business from regulatory burdens as it was originally intended. The Regulatory Flexibility Act was designed to ease the regressive impact of "one-size-fits-all" regulations on small business. It was supposed to force regulators to consider the differences between big and small businesses, and to take into consideration the economies of scale.

It is important to note that NFIB is firmly opposed to incorporating big business into the Regulatory Flexibility Act, as has been suggested by some members of the U.S. House of Representatives. Doing so will take the focus of regulatory flexibility away from small business and may dilute the benefits America's entrepreneurs need most.

Under the Regulatory Flexibility Act (Reg-Flex), agencies issuing regulations must analyze and describe the impact the regulation would have on small businesses and other small entities. The analysis must outline possible alternatives to the proposed regulation which would accomplish the same objectives at a lower economic impact on small business.

### Examples of alternatives agencies must consider include:

1. Establishing differing compliance or reporting requirements that take into account the resources available to small businesses;
2. Using performance rather than design standards; and
3. Exempting small businesses from all or parts of the regulation.

At the same time the final rule is issued, the changes (or lack of changes) made to the regulation on behalf of small business are also published. If a less costly alternative for small business was not adopted, an explanation must be provided by the agency.

Reg-Flex does not start from the premise of whether the regulation is needed. Rather it requires agencies to consider the type of regulation imposed and whether it is the least burdensome means of achieving the objectives of the agency for small business.

The original purpose of the Regulatory Flexibility Act states,

"It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, **to fit regulatory and informational requirements to the scale of the businesses, organizations and governmental jurisdictions subject to regulation.**" (P.L. 96-354)

Sounds good, doesn't it? But wait.

There is no way to enforce the compliance of regulators with Reg-Flex. Section 611 of the original Act includes a specific prohibition on judicial review of Reg-Flex analyses.

Because Reg-Flex is not enforceable, agencies like the Internal Revenue Service and the Department of Defense exploit the loopholes and ignore the Reg-Flex Act. Small business needs a hammer to force agencies to comply. That hammer is judicial review, or judicial enforcement, which will allow an agency's compliance with Reg-Flex to be challenged in a court of law.

In the 103rd Congress under Senator Malcolm Wallop's leadership, both Houses of Congress overwhelmingly approved legislation removing the prohibition of judicial review for the Regulatory Flexibility Act. The Senate, by a vote of 67 to 31, adopted an amendment to repeal the prohibition on judicial enforcement. The National Competitiveness Act (S. 4), which was the vehicle for this needed reform, never made it to the President's desk because of disputes over other provisions in the legislation.

In this new Congress, NFIB is hopeful the President will live up to the tone he set in his letter to the Senate last year and the tone which the recommendations of the White House Conference set. He stated, "My Administration will continue to work with Congress and the small business community next year [1995] for enactment of a strong judicial review that will permit small businesses to challenge agencies and receive meaningful redress when agencies ignore the protections afforded by this statute." His support for strong judicial review was echoed in additional letters by the Administrator of the Small Business Administration, Phil Lader, and by the President's Chief of Staff, Leon Panetta.

Even the General Accounting Office has recommended that the Office of Management and Budget should prohibit publication of proposed or final rules that do not comply with the Regulatory Flexibility Act. (Regulatory Flexibility Act; Status of Agencies' Compliance, report no. GGD-94-105, GAO, April 1994)

### Recommendations

NFIB has developed a series of recommendations we believe will strengthen the Regulatory Flexibility Act. Since we testified in March of 1995, we are pleased many of our recommendations have been included in the legislation before us today.

1. **Repeal the prohibition on judicial review.** Together with President Clinton's support for strong judicial review, Vice President Gore's recommendation for judicial review in the National Performance Review and the recommendations of the White House Conference, I believe Jere Glover, Chief Counsel for Advocacy at the Small Business Administration, sums it up best, "The only way to ensure that each rulemaking from every agency complies with both the letter and spirit of the RFA is to make sure that an agency pays a 'penalty' for failing to comply...The best mechanism for doing that is through judicial review." Then, Mr. Glover goes on to state that "The fears of judicial review are overstated." (Testimony of Jere W. Glover before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee, February 3, 1995)

The first argument you will hear from federal agencies and pro-regulatory extremists is that judicial review of Reg-Flex will create a barrage of lawsuits, clog the courts and stop new regulations altogether -- the very same arguments they used in 1980 to get judicial enforcement prohibited. Well, we have tried it their way for 15 years,

and it hasn't worked. After a decade and one-half, it is time to try it our way.

As long as federal agencies follow the law -- in this case the Reg-Flex law and take small business into consideration when they are drafting regulations -- they have nothing to fear with judicial review. Only the agencies who ignore small businesses and Reg-Flex should be worried. And hopefully after a couple recalcitrant agencies are reprimanded by a few federal judges, they will learn that they are no longer above the law and will start doing what Congress and the President originally intended them to do.

The high cost of litigation will most certainly limit small businesses use of judicial review making it a last resort effort in only the very worst cases.

2. **Broaden standing.** As long as small business can prove that it is, or it will be, adversely impacted by a regulation, we believe that the firm should have standing and be allowed into court on this matter. A small business should be allowed to challenge a Reg-Flex analysis if:

- A. the agency certifies there would be no significant impact on small business, and there is;
- B. the agency does a defective job with the Reg-Flex analysis; or
- C. the agency doesn't comply with Reg-Flex at all and completely ignores it during proposed and final rulemakings.

3. **Courts must "stay" regulations.** We continue to believe, if an agency's compliance with Reg-Flex is successfully challenged in court, the court must stay -- or put on hold -- the regulation until the agency complies with the intent of the Reg-Flex Act and the court. This will save small business owners money that might have been spent complying with regulations that were not properly issued.

NFIB strongly supports recommendations made by the White House Conference on Small Business.

The draft legislation circulated by the Chairman puts some of those recommendations into legislative language.

Following are NFIB's comments on some of the provisions in the draft legislation:

1. **Right of Small Entities in Enforcement Actions.** NFIB strongly supports first instance violation waivers and an abatement period while a small business corrects the violation within a reasonable period of time. However, this provision only covers the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Administration (EPA). NFIB would recommend broader application of this provision to other federal agencies in the spirit of the White House Conference recommendations that all agencies provide a cooperative/consulting regulatory environment.

2. **Equal Access to Justice Act Amendments (EAJA).** NFIB has advocated and supported creating a level playing field between small business and the government in terms of resources available in litigation. Currently, the EAJA has not lived up to its original intent because the standards used to show the government acted unreasonably are too high. In many cases, a small business will just pay excessive and erroneous fines and penalties rather than incur large court costs even if they know they are right.

3. **Small Business Advocacy Review Panels.** NFIB supports the concept of making sure that the input of small business owners is required during the development of regulations affecting small business.

#### **Conclusion**

NFIB is committed to ensuring small business owners receive strong and effective judicial review with strong remedies for non-compliance under the Regulatory Flexibility Act. In addition, we support the concept of this legislation to implement many of the White House Conference recommendations, such as allowing first instance violation abatement period, allowing small business to recover their expenses and legal fees from the government when regulators make excessive demands for fines and penalties, and providing input from small business during development of regulations affecting them. We look forward to the President signing a bill into law that will accomplish this.

Thank you, Mr. Chairman, for allowing me to testify today on behalf of NFIB's more than 600,000 small business owners. I thank you for your leadership in this area and the introduction of your bill. We look forward to working with you to strengthen the Regulatory Flexibility Act and implementing other White House Conference recommendations into legislation during the 104th Congress.



Chairman BOND. Thank you very much, Mr. Swanson.  
Dr. Tucci.

**STATEMENT OF VICTOR N. TUCCI, M.D., PRESIDENT, THREE RIVERS HEALTH AND SAFETY, INC., PITTSBURGH, PENNSYLVANIA, AND BOARD OF TRUSTEES MEMBER AND CHAIRMAN, REGULATION AND PAPERWORK COMMITTEE, NATIONAL SMALL BUSINESS UNITED, WASHINGTON, D.C.**

Dr. TUCCI. Good morning, Chairman Bond and members of the Committee. My name is Victor Tucci and I am the president of Three Rivers Health and Safety, Inc. We are a consulting firm out of Pittsburgh, Pennsylvania, and we work with small businesses to help them comply with the various regulations that we are now looking at in these hearings.

I am proud to be representing National Small Business United and I am the chairperson of the Regulatory and Paperwork Committee at NSBU. I am also a member of the Board of Trustees of the SMC, which is a small business organization in Pittsburgh, Pennsylvania. I was also a delegate at the White House Conference on Small Business.

I would like to take this opportunity to thank the Committee, especially Chairman Bond, for holding this hearing and for being so helpful in the continuing search for solutions to a wide range of small business problems and concerns. You have been especially active over the last year in searching for solutions to the many regulatory barriers that have been erected in the way of small business growth and prosperity.

Strengthening the Regulatory Flexibility Act has already achieved backing from both Houses of Congress and the President. It has broad bipartisan support and no issue ranks consistently more important on the frontier of small business concerns than regulatory reform. This is something that Congress can constructively get done and we hope that you will get on with doing it.

But this fine bill does not stop with strengthening the Regulatory Flexibility Act. It goes on to include provisions designed to give small business input early in the regulatory process and to assist small business once the regulations are promulgated, and this is very important.

S. 942 would require agencies to, first of all, as we talked about, use plain English—what a unique idea—in wording the regulations, and also enable Small Business Development Centers to provide compliance assistance and information for small businesses who nevertheless find themselves entangled in regulatory problems.

S. 942 would create a confidential ombudsman at the Small Business Administration, which we do support, to record their problems and strengthen Equal Access to Justice. This was a product of the 1980 White House Conference on Small Business for those businesses who find themselves battling an agency in court.

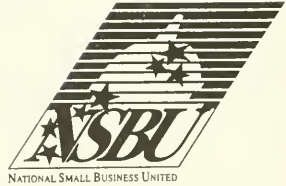
There appears to be a feeling among many regulators that the Act is an unnecessary nuisance and many regulators are guilty of looking for creative and some not so creative ways to ignore it. The only effective way to stop this sort of abuse of the Act is to create severe penalties in cases where they are not observed.

One of the best ways to achieve this enforcement is through judicial review. If small business owners can bring suit against regulators who have ignored the Act, the threat of such action will instill a new rigor in the regulatory process. It should be clear that especially without appropriate judicial review, the degree of implementation of the Act will only be as high as the commitment the regulators have to it.

The guiding principles behind the Act will be defined. The problem remains perfecting the tools for carrying out those principles. S. 942 is a major leap in that direction.

In conclusion, NSBU believes that the Small Business Regulatory Enforcement Fairness Act of 1996, S. 942, is an extremely helpful step in reforming the regulatory process to the benefit of small business. We strongly support it. We hope the Senate will take expedient and bipartisan action to send this bill to the House.

[The prepared statement of Dr. Tucci follows:]



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## Statement of

**Victor Tucci, M.D.**  
**President**  
**Three Rivers Health and Safety, Inc.**  
**Pittsburgh, PA**

Good Morning. My name is Victor Tucci, and I am president of Three Rivers Health and Safety, Inc., a regulatory compliance consulting firm out of Pittsburgh, Pennsylvania. I am proud to be representing National Small Business United (NSBU) at today's hearing. I serve as NSBU's Regulation and Paperwork Committee Chair, and I am also on the Board of SMC, one of NSBU's members associations, which is based in Pennsylvania. I would first like to take this opportunity to thank the committee, and especially Chairman Bond, for holding this hearing and for being so helpful in the continuing search for solutions to the wide range of small business problems and concerns. You have been especially active over the last year in searching for solutions to the many regulatory barriers that have been erected in the way of small business growth and prosperity.

National Small Business United (NSBU) is the oldest association exclusively serving the small business community of our nation—for over 50 years now. NSBU serves over 60,000 individual companies with members in each of the 50 states, as well as local, state, and regional organizations. NSBU is uniquely qualified to represent the views of the small business person.

## I. Introduction

I am pleased to be here today to testify on the new draft of S. 942, the centerpiece of which is the much-needed strengthening of the Regulatory Flexibility Act. This bill does not attempt to address the full gamut of regulatory reform issues. Instead, it justifiably focuses its attention on those provisions which would most immediately and most dramatically help the situation of America's small businesses. Strengthening of the Regulatory Flexibility Act has already achieved the backing of both houses of Congress and the President, and has broad bi-partisan support. No issue ranks more consistently in the front tier of small business concerns than regulatory reform. This reform is something the Congress can constructively get done, and it should get on with doing it.

But this fine bill does not stop with strengthening the Regulatory Flexibility Act, it goes on to include provisions designed to get small business input early in the regulatory process, and to help small business once the regulations are promulgated. S. 942 would have agencies put regulations into "plain English" and enable the Small Business Development Centers to provide compliance assistance and information. For small businesses who nevertheless find themselves entangled in a regulatory problem, S. 942 would create a confidential ombudsman at the SBA to record their problems, and it strengthens the

Equal Access to Justice Act (a product of the 1980 White House Conference on Small Business) for those businesses who find themselves battling an agency in court.

## II. The Need for Regulatory Flexibility Act Reform

After being a top recommendation of the first White House Conference on Small Business, the Regulatory Flexibility Act (RFA) passed Congress in 1980 as a result of the realization that small businesses and large businesses often function in fundamentally different ways. They are so different, in fact, that regulations which treat them identically can be considered discriminatory toward small businesses. With passage of the Regulatory Flexibility Act, Congress firmly established the principle that small businesses are unique, and that regulators would no longer pass rules and regulations without considering the effect on smaller businesses and considering less burdensome alternatives. Since its original passage, the Act has also become an important model utilized by state governments as well.

The Regulatory Flexibility Act requires regulators to consider and account for the costs to small businesses of their actions. Although not without its problems and substantial areas for improvement, these first years of implementation of the Regulatory Flexibility Act (RFA) have proven its value--and even greater potential--to the small business

community. As I shall attempt to point out, however, areas of concern remain, particularly with respect to enforcement of the Act.

The RFA requires every agency to perform an Initial Regulatory Flexibility Analysis (IRFA) for each regulation deemed to have a significant impact on small business. These IRFAs must first contain estimates both of how many small businesses would be affected and descriptions of their regulatory requirements, including special skills which might be necessary to fulfill those requirements. The IRFAs must then also discuss alternatives and their feasibility.

The obvious flaws in this process, which have led to problems in the past, are that it is the agency's responsibility to decide whether the rule has a significant impact on small business (good or bad) and to perform the IRFA to determine the extent of that impact. The conclusions of the agencies regarding these matters are not always thoughtful and well documented; hence, the quality utilization and recognition of the intent of the RFA is sporadic. The Office of Advocacy within the Small Business Administration (SBA) is charged under the RFA with reviewing regulations for their impact on small business, but regulators are not required to abide by SBA recommendations or submit proposals for early review.



Perhaps more importantly, the Act does not provide for any judicial review and recourse in a situation where regulators have ignored the provisions of the RFA, such as by falsely declaring that a rule would not have a significant impact on small business.

There appears to be a feeling among many regulators that the Act is an unnecessary nuisance, and many regulators are guilty of looking for creative (and some not-so-creative) ways to ignore it. The only effective way to stop this sort of abuse of the Act is to create severe penalties in cases where it is not observed. One of the best ways to achieve this enforcement is through judicial review. If small business owners can bring suit against regulators who have ignored the Act, the threat of such action will instill a new rigor in the regulatory process. It should be clear that—especially without appropriate judicial review—the degree of implementation for the Act will only be as high as the commitment the regulators have to it.

The guiding principles behind the Act are well defined; the problem remains in perfecting our tools for carrying out those principles. S. 942 is a major leap in that direction.

S. 942 would allow full judicial review and challenges to agencies' interpretations of the Act. The bill would also require agencies to state the factual and legal reasons for determining that the RFA does not apply (if such a determination is made).

### III. Incorporating the IRS

It is surely the case that no set of regulations affect small businesses more than those found in the Internal Revenue Code. Yet, largely by self-proclamation, the IRS is—for all practical purposes—exempt from the requirements of the RFA.

Interpretive decisions (those intended simply to implement a statute when Congress has not delegated any real authority to the agency) are not impacted by the Act. The IRS, therefore, claims that its "interpretive" rules are beyond the reach of the RFA. It has long been the position of NSBU that the IRS should be placed fully under the scope of the Regulatory Flexibility Act. Simply because a ruling is interpretive in nature and is following Congressional intent does not mean that an alternative rule, more favorable and workable for small business, is not possible. Furthermore, even in instances where the IRS has little latitude from Congress to formulate an alternative rule, an analysis could be very useful to legislators to realize the problems for future decisions. NSBU is excited that S. 942 would finally bring the IRS under the provisions of the Regulatory Flexibility Act.

#### IV. Small Business Review Panels

As important as it is for small businesses to have recourse against unreasonable, ill-considered, or poorly enforced regulations, it is most important to have well-developed regulations in the first place. To accomplish this goal, S. 942 would require agencies to work with the Office of Advocacy to establish review panels for rules that will have a substantial impact on small businesses. By getting this input on the front end, the agencies can craft a workable regulation.

But to optimize the input of the review panels, the agencies will need to be very clear about the potential requirements on small businesses, as well as the need for the regulation. A review panel of small business owners that is clearly presented with the issues can provide invaluable practical assistance, but a poorly prepared or briefed review panel can be led into bad decisions. Since the SBA Office of Advocacy is charged with identifying the small business representatives to the panels, it might also be wise to give them some role in briefing the panelists (of course, realizing the limited resources of the office).

## V. Compliance Issues

In addition to all of the safeguards designed to create workable regulations for small businesses in the first place, S. 942 also addresses the equally important issue of making compliance with necessary regulations easier.

First, the bill would improve access to information for small businesses by requiring that agencies publish a "plain English" guide to actions that small businesses are required to take. In addition, that excellent national network of Small Business Development Centers (SBDCs) would be authorized to begin providing regulatory compliance assistance and information. We would specifically like to see a national computer database--put together by the SBDCs or someone else--which would be able to pull these guides and other regulatory information into one place. This recommendation was one of those put forth by the White House Conference on Small Business, and it is very sensible.

But what happens when a small business has a problem? Perhaps the scope or requirements of a regulation are still unclear, or perhaps a small business feels that an agency is improperly enforcing a regulation. S. 942 creates potential courses of action for such a small business owner.

First, the bill would create a "Small Entity Ruling", which would function in a similar way to the IRS's private letter ruling. Such a program would allow small businesses to directly inquire as to their status vis-a-vis ambiguous regulations. Second, the bill would create a Small Business and Agriculture Ombudsman at the SBA. This Ombudsman would provide a forum for small businesses to confidentially rate and comment upon the performance of various agencies.

For small business owners who have been found by an audit or inspection to be in first-time violation of EPA or OSHA regulations, fines and penalties would be waived, so long as those violations are corrected. This provision codifies existing initiatives by EPA and OSHA, and would not apply to criminal conduct or the most serious violations. NSBU supported those agency actions and supports the codification of those actions.

The Equal Access to Justice Act allows small businesses to recover attorney's fees when they win a case in court over agencies who have engaged in abusive or excessive enforcement actions. S. 942 strengthens that Act by increasing the recoverable rate for attorney's fees from \$75 per hour to a more reasonable \$125, and it makes other targeted changes to strengthen this very pro-small business law.

**VI. Conclusion**

NSBU believes that the Small Business Regulatory Enforcement Fairness Act of 1996 (S. 942) is an extremely helpful step in reforming the regulatory process to the benefit of small businesses. We strongly support it, and hope that the Senate can take expedient and bi-partisan action and send this bill over for House approval.

National Small Business United appreciates the opportunity to testify before the Committee today. We also wish to thank the Committee for holding this hearing on a matter of such importance to small business. Small business regulatory reform is one of NSBU's highest priorities and we stand ready to help move S. 942 through the process in any way we can.



Chairman BOND. Thank you very much, Dr. Tucci, for your comments and also for your kind words.

Mr. Pincus.

**STATEMENT OF H. DANIEL PINCUS, PRESIDENT, HDP INDUSTRIES, HILTON HEAD, SOUTH CAROLINA, AND FIRST VICE PRESIDENT, NATIONAL ASSOCIATION OF HOMEBUILDERS, WASHINGTON, D.C.**

Mr. PINCUS. Thank you, Mr. Chairman. Mr. Chairman and Mr. Bumpers, other members of the Committee I want to applaud you for holding this important hearing to follow up on the White House Conference on Small Business.

My name is Dan Pincus and I am a builder from Toms River, New Jersey, and I appreciate the opportunity to participate in this great American process today. I also build on Hilton Head Island, South Carolina, so I am familiar with multi-State problems.

I am here as a small business person and the first vice president of the National Association of Home Builders, NAHB, representing over 185,000 employers and over seven million employees across this country. The majority of NAHB members are small business owners just like myself. It is common knowledge that our Nation's small business community is the engine driving our economy. When small business is doing well, our economy prospers. When small business suffers, however, our economy pays the price.

I would, therefore, like to commend the leadership of the 104th Congress and specifically Chairman Bond for their advocacy on behalf of small business. We have begun to see some major efforts to change the way in which the Federal Government treats small business and to pare down the Byzantine structure of regulations that currently burden us. We certainly hope that these efforts bear fruit, and the sooner the better.

I was heavily involved with the Conference as a delegate appointed by Congressman Dick Zimmer. I am familiar with the multitude of issues which emerged as a result of the hard work done by those involved and will say that the Federal regulatory burden faced by small business was the driving force of most, if not all, the conferees there.

I must also say that I believe the Conference was convened for a specific reason. Three Presidents of this United States wanted to sound out the problems faced by small business and to provide hands-on solutions to correct them and go right to the grassroots for the answers to what is happening in our industry.

The Conference was extremely successful in bringing to light the excessive paperwork burden currently shouldered by small business. However, the Conference noted that some reforms require legislative solutions because many of their past recommendations went unnoticed, at least from our perspective. It is clear to me that the non-binding recommendations of the Conference are just not enough. Legislation is needed to truly improve the regulatory arena in which we must conduct our everyday business.

I understand that members of this Committee are developing legislation to implement three specific recommendations of the Conference.

Conference Recommendation No. 183 calls for changes to the Regulatory Flexibility Act of 1980, as we know. The Reg Flex Act "requires" agencies to assess the impact of regulation on small businesses and when an adverse impact is determined, to act to mitigate that impact. I have quotes around the word "requires", as you can see, because there is currently little enforcement of this portion of the Act.

The White House Conference on Small Business calls for Congress to amend the Regulatory Flexibility Act to require agencies to perform risk assessment and cost/benefit analyses on all new regulations to provide meaningful judicial review to enable courts to force agencies to rewrite onerous regulations and provide an active role for small business in the development and implementation of regulations.

Requiring agencies to perform risk assessment and cost/benefit analyses would provide meaningful relief, believe me, to small business. The efforts between NAHB and OSHA on fall protection provide a good example. In early 1995, OSHA required that anyone working over a height of 6 feet be tied off or protected by safety nets on every house. Anyone who has ever been on a residential construction site knows full well the problematic problems that this regulation and requirement would have placed upon us.

We appealed to Congress for help. The effect was to bring OSHA to the bargaining table and agree to reopen and revise this rule. That process is ongoing and we anticipate working closely with OSHA to develop more reasonable fall protection requirements—only were they brought to the table because of what was going on in this Committee and in these halls in the Senate.

Had OSHA been required to actually assess the impact of this rule prior to its development and implementation, a more reasonable fall protection standard could have been developed without 6 months of rancor and an entire new rulemaking process. The end result would have been far better for all parties involved. We will be working with OSHA toward a rule that will further protect workers without unduly raising the cost of housing. It would have also saved the Federal Government a lot of time and a lot of expense, partially negating Mr. Deer's concerns over his budget.

Conference Recommendation No. 188 would require agencies to streamline and review their regulations and to sunset those which are found to be duplicative or obsolete. President Clinton, early in his Administration, held a press conference featuring two forklifts filled with regulations. Vice President Gore went on late-night television smashing glass ashtrays to see if the broken shards were compatible with Federal specifications.

In fact, the Clinton administration has made some progress in its efforts to streamline these regulations. This recommendation would build on the Administration's stated support by statutorily requiring agencies to constantly perform the type of review and reinvention that the Clinton Administration's publicly stated policy supports.

Finally, Recommendation No. 194 would impose a series of parameters on agencies' enforcement powers. Among other requirements, agencies would be required to become more cooperative and less punitive. However, the enforcement hammer would not be re-

moved for those who willfully avoid regulatory compliance. Penalties would have to be commensurate with the violation. No longer would fines be associated with a minor or incidental breach of a regulation. Additionally, fines could be used toward correcting a violation, which will assure compliance faster and much more efficiently.

These recommendations have emerged directly from the Conference, which I participated in, and are strongly supported by NAHB. They are results of the efforts of small business owners from all industries and all points of the compass working at the request of the Clinton administration. They all represent clear, common sense-oriented recommendations to ease the burden on small business while streamlining Federal Government.

To recommend is one thing. To act, however, is another. On behalf of the 185,000 employer members of NAHB and approximately 1.5 million new home buyers in this country, I urge this Committee to pass legislation to enact into law these much needed regulatory improvements. I want to thank you, sir, and I appreciate you allowing me to overrun a little as you did.

Chairman BOND. Thank you very much, Mr. Pincus.

Ms. Lechner.

**STATEMENT OF WENDY LECHNER, LEGISLATIVE DIRECTOR,  
PRINTING INDUSTRIES OF AMERICA, INC., ALEXANDRIA,  
VIRGINIA, ON BEHALF OF THE SMALL BUSINESS LEGISLATIVE  
COUNCIL, WASHINGTON, D.C.**

Ms. LECHNER. Mr. Chairman, members of the Committee, thank you for the opportunity to testify on S. 942. My name is Wendy Lechner and I am the legislative director of the Printing Industries of America. PIA is the Nation's largest graphic arts association, with more than 14,000 members. My comments also reflect the views of the nearly 100 member associations of the Small Business Legislative Council.

I want to thank you and the Committee staff for your efforts to develop this legislation. Despite numerous attempts by Congress, regulatory reform in the small business sector is illusory. The claims that government paperwork and regulatory requirements are being cut back are just that, simply claims. Few small businesses have experienced any real improvements. We believe that S. 942 makes a good start toward changing that regulatory culture.

Among the many positive features of S. 942 is the strengthening and expanding of the small business ombudsman. Currently, EPA is one of the few agencies that seeks to help small businesses, which they do through the section 507 program of the Clean Air Act. This is one of the few small business regulatory programs that is actually achieving results. That provision created a network of environmental small business ombudsmen in the States to assist small businesses in understanding the complexities of the Act.

Most small business owners want to do what is right, but determining their responsibilities is almost impossible. The EPA ombudsman program gives small businesses a point of contact that has their interests at heart, a rare concept in Federal programs.

As we sit in this room today, representatives of 43 States that have such programs are meeting in San Diego with representatives



of the small business industries to look into expanding these programs and they are already becoming overloaded with requests for help.

Mr. Chairman, with respect to your legislation, we would take an additional step. We believe ombudsman programs, such as the one at EPA, should be replicated in every single agency. Further, these programs should be coordinated to ensure that we do not simply create duplicative and competing programs in the name of helping small businesses. For that purpose, we like the idea of having this SBA ombudsman oversee the program.

We also commend your focus on improving the use of compliance guides by Federal agencies. We would suggest a further provision that would prohibit agencies from issuing regulations until compliance guides are produced and available. It is a common occurrence that laws that are passed impose implementation deadlines on agencies. However, because of the complexities of many of the laws, the guidance documents that should accompany the regulations are not completed in the time required by Congress. This occurred with respect to the Americans with Disabilities Act and we are in the same dilemma with the Clean Air Act.

Further, you may wish to encourage agencies to work with the communications departments of trade associations, both in terms of making guidance documents understandable and getting the communications pieces in the right hands. In fact, agencies should be directed to use association guidance wherever possible. Often, the cost is lower and it is done in a manner that is more readily understood by the industry affected.

Of primary concern to White House Conference delegates was the myriad of regulations that they face. We would suggest that you require each agency to provide a list of the reporting and permitting requirements to which a small business in a given industry is subjected. PIA went through this exercise several years ago and discovered at that time that there were over 46 Federal environmental reporting requirements alone that could affect printers. It was only through a systematic analysis of the reporting burden that we will be able to see exactly what Federal agencies ask of small businesses and determine what can be reigned in.

Mr. Chairman, we do not come here today simply to outline problems without having tried solutions. The printing industry has taken an active part in attempting to work with regulatory agencies. We are currently involved at EPA in the Common Sense Initiative, a Design for the Environment project, and a cooperative effort with the Council of Great Lakes Governors, the Environmental Defense Fund, and EPA. Further, the printing industry's association of Southern Ohio developed an industry partnership with OSHA and the Ohio Bureau of Workers' Compensation to get assistance on machine guarding on presses, bindery equipment, and other machinery. We hope to expand the program to ergonomics next.

Despite our efforts, we continually run into road blocks. For the second time in 16 years, EPA has failed to complete the air pollution control techniques guidelines for our industry. These would help ensure consistency in the regulation of printing. Without guidance, the States are free to develop whatever rules they wish,

which is a serious problem. We are also still without guidance on determining the best testing methods to calculate volatile organic compound emissions in printing presses.

With respect to OSHA, despite our machine guarding agreement in Ohio, OSHA is planning to oppose an amendment that would give it statutory authority to develop partnerships in other parts of the country with businesses and trade associations. Because they fear funding cuts in their enforcement program if the amendment passes, they would prefer not to develop partnerships which could help protect more employees before accidents occur.

Mr. Chairman, there is a tremendous amount of creativity across the country that can result when small businesses and government officials understand one another better. Your legislation will enable small businesses to make their voices heard so that solutions can be more responsive to their needs.

We are grateful for the opportunity to testify and look forward to working with you to secure passage of your bill. Thank you.

[The prepared statement of Ms. Lechner follows:]

Wendy Lechner  
Legislative Director  
On behalf of the Printing Industries of America  
And the Small Business Legislative Council

Mr. Chairman, Members of the Committee, I appreciate this opportunity to comment on S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. My name is Wendy Lechner. I am the legislative director for the Printing Industries of America. PIA is the nation's largest graphic arts association with more than 14,000 members. My comments today also reflect the views of the nearly 100 member associations that comprise the Small Business Legislative Council.

I want to thank you and the committee staff for the effort in developing this legislation. True regulatory reform in the small business sector has often been illusory. Much time and effort are put into proposals and plans only to find that when the ink is dry, the small businesses that are supposed to benefit cannot see or feel the change. We believe S. 942 is a good start toward real reform.

Among the many positive features of S. 942 is the strengthening of the small business ombudsman function of the federal government. We in the printing industry know such programs work and work well. PIA was instrumental in the effort to secure passage of the Small Business Technical and Educational Assistance amendment to the Clean Air Act, now section 507. That amendment created a network of small business ombudsmen in the states to assist small businesses understand the complexities of the Clean Air Act. As we are sitting in this room representatives of the 43 states that have such programs are meeting in San Diego with representatives of small business industries, including printing, to see how to expand these programs. Already the programs are becoming overloaded with requests for help from small businesses.

In truth, Mr. Chairman, we would take your concept an additional step. We believe programs such as the 507 program should be replicated throughout the regulatory agencies. However, we also believe these programs should be coordinated to the greatest extent possible. While we have not come up with the ideal recommendation, it is possible that the SBA could coordinate the ombudsman functions to ensure that we did not fall into the trap of creating competing or duplicative programs in the name of helping small business.

We would recommend an improvement to Section 102 of the legislation dealing with compliance guides. We believe that no agency should be able to issue regulations until compliance guides are produced and available. Too often the statutory guidelines imposed on the agency are such that guidance documents cannot be done before the effective date of the regulations. We are in that dilemma with the Clean Air Act. Despite the fact that EPA did not complete an industry guidance document required by the Act, regulations are being implemented.



Also, in section 102, we would urge all the regulatory agencies to use the communications strengths of trade associations to develop the communications pieces. In fact, the agencies should be directed to use such association guidance whenever possible. Often the cost is lower and is done in a manner that can be more readily understood by the industry small business.

With regard to section 201, a small business ombudsman should be designated for every regulatory agency. This individual should report to the ombudsman created by section 201 to ensure a measure of independence from the regulatory agency. That role could be served by the advocacy chairperson established under section 404.

Another regulatory reform that could be incorporated into this legislation is a requirement that each agency provide a list of the reporting and permitting requirements to which a small business subject. We went through this exercise several years ago and discovered that there are over 46 federal environmental reporting requirements that could affect printers alone. It is only through such a systematic analysis of reporting burden that we see exactly how much we ask of business, particularly small business.

The truth about small business is that most want to do what is right but they rarely have the tools to even determine what the right thing is. They need to have a point of contact in an agency to find out what their responsibilities are. Ombudsman programs provide this point of contact. Additionally, they give small business people the feeling that the government is their ally rather than their enemy.

Most of the examples you will hear about regulatory reform will involve unfair OSHA or EPA inspectors, regulations that are incomprehensible, and proposals issued without consultation or good science. We wish to provide another set of real-world problems that could be addressed through S. 942.

This country has free trade agreements with Mexico and Canada. We have virtually eliminated tariffs in the three countries. Trade and information about trade among these countries should be easy. Unfortunately, there is no point of contact at the Commerce Department to answer basic questions about trade. The kind of question a small business person is likely to face may not involve a marketing plan for a long term export relationship. In our industry, for example, a customer would expect his printer to understand the trade requirements that may affect that export. It recently took our office over a week to verify the current requirements for the country of origin markings for products going into Canada. While we have the guidelines in our office, they are dated 1993. We wanted to ensure that they were current. After several phone calls, we found someone who was able to obtain the information by ordering it from Canada. This employee deserves praise for the extra effort to obtain the information but her agency should have a system in place to ensure that information of that type was on hand. It took us numerous attempts, and we are professionals in obtaining information from the government. I would urge you to try to obtain similar information and you will get a glimpse of the barriers our system imposes on small business. Industry by industry guidance documents of the type described in S. 942 for regulatory programs would also be helpful for trade and other related activities.

There may be no small business industry in the United States more involved in efforts to work with the EPA than the printing industry and our association specifically. We are involved in the Common Sense Initiative; a Design for the Environment project; and a cooperative effort with the Council of Great Lakes Governors, the Environmental Defense Fund, and the EPA. In short, we are doing every thing we can to be a contributor to an improved regulatory system. Despite our efforts and involvement, we run into roadblocks at EPA which frustrate our industry. Specifically, we have attempted twice in the past sixteen years to get air pollution control techniques guidelines (CTG) for our industry from EPA. These guidelines would provide the states with a technical road map for the printing industry. Significantly, issuance of the standards would help ensure consistency throughout the states in the regulation of printing, particularly those smaller companies coming into the permit system for the first time. This CTG was required by the 1990 Clean Air Act. For the second time in sixteen years, EPA failed to complete the CTG leaving the states free to interpret the rules as they wished. We now have varying control guidance or in some cases the use of draft guidance which was started but never finished. For a similar period of time, we have been asking EPA to resolve a technical issue for us on determining the best testing method to calculate volatile organic compound emissions from printing presses. If EPA would make a clear recommendation, we would again have consistency. This issue has gone unresolved.

At its upper levels, EPA is an improving agency. In fact, EPA is undergoing a significant culture change at the top to become more business customer friendly. This culture change is very slow to take hold at the other levels. Fortunately for all of us in small business, EPA has the single best ombudsman program in the federal government. The small business ombudsman office at EPA has total credibility within the small business community, operating more like an office of advocacy. Of course, we find it ironic that the office is located in Virginia across the river from the main EPA office and removed significantly from the Administrator and her assistants.

While EPA is taking the first steps to work with small business-dominated industries, our experiences at OSHA show that cooperation and understanding are the exception rather than the rule. For example, an employee at Johnson & Hardin, a large printing company in Ohio, suffered an accident on a paper drill. When OSHA arrived to cite the company, the inspector mentioned that he thought two other machines may need safety guards as well. Johnson & Hardin asked the inspector to immediately look at the machines and tell them how to improve them. The inspector said that if he did and he found anything amiss, he would have to cite the company for those violations as well. Needless to say, the printer decided to seek other assistance.

Johnson & Hardin and the Printing Industries Association of Southern Ohio (PIASO) subsequently asked OSHA, along with the Ohio Bureau of Workers Compensation, to set up an agreement through which printers in the area could ask OSHA to come in and give them advice on machine guarding without the fear of citations if the problems were promptly corrected. After approval from higher up, OSHA agreed on the grounds that they would put nothing in writing. The printers would have to simply act on faith -- a gutsy move given OSHA's past record of inspection activities

In short, the Machine Guarding Project is a success. So much so that PIASO and a number of companies are now discussing entering into another agreement with OSHA to improve ergonomics in the printing industry. Just as in the Machine Guarding Project, the before and after improvements will be videotaped so other printers can learn from these experiences. As a result, printing equipment will be safer, and therefore, employees will be safer.

Unfortunately, now that PIA is attempting to add an amendment to the OSHA reform bill that would give OSHA statutory authority to carry out such cooperative programs nation wide, the agency has stated it will oppose the amendment.

Despite the rhetoric of improved cooperation and consultation at OSHA, it would appear that the agency has little commitment to anything other than improving its press image. Your legislation could change this by giving printers and other industry sectors the ability to work directly with the agencies on alternatives that make sense in small businesses. Johnson & Hardin is a large printing company which could get a hearing at OSHA. Small printers and other small businesses do not have the ability to rock the bureaucratic boat without a voice within the agencies. As a result, their problems are ignored and they see that once again, their government really does not want to help them their problems.

Perhaps the biggest problem of all faced by small business is the battle we fight over the perceived amount of help we are getting versus the actual amount of help. There are no limits on the number of people in Washington who will come before any group and tell of all the things being done for small business. However, when you talk to small printers in Missouri or any other states, they will say they have not experienced the relief. The problem is that most of the talk is just that. There are no products, no deliverables, no finished goods. These small business folks are tired of people who feel their pain -- they want someone to ease their pain or at least quit causing pain.

Finally, Mr. Chairman, we would encourage you to be bold. Small business needs to be rewarded for doing the right thing. A system needs to be created which gives the business and the state credit for establishing cooperative programs. Specifically, under the Clean Air Act, states must meet overall air emission objectives. These objectives generally are met through state run permit programs. While the Clean Air Act does not order EPA to go after small printing companies, the goals established for the states leave them little alternative but to require permitting for small companies. These companies in turn have to take extraordinary steps to meet guidelines established for larger companies. During the debate on the 1990 Clean Air Act amendments, we have proposed that EPA give a state credit toward meeting its implementation plan goals for creating small business education and simplification programs. We believed the effort by the states to create such a framework would result in air emissions reduction as great or great than regulatory requirements. Additionally, very few small businesses can calculate the amount of emissions they have anyway so EPA and the state agencies have no reliable method of measuring improvements in the most rigid regulatory program. Obviously, that suggestion did not make it in to the Act but we should keep the door open for future amendments.

Real regulatory reform can be achieved by allowing the states or business itself to create solutions. Despite the talk, we are very much in a cookie cutter approach to regulations.

Companies such as Johnson & Hardin should be encouraged to take bold initiatives but they should not have to take the risk that their solutions may be found contrary to regulations by another inspector. Small companies or groups of companies which step forward to engage in educational or pollution prevention programs should get credit for such efforts. Unfortunately, without tangible results, these projects can become as time-consuming as the regulations themselves.

Legislation such as S.942 will enable small firms to address many of the concerns raised in this testimony. We are grateful for the opportunity to testify and look forward to working with you to secure passage of the bill.

G:GOVT/TESTIMONY/S942

Chairman BOND. Thank you very much, Ms. Lechner. Now we turn to Mr. Morrison.

**STATEMENT OF JAMES W. MORRISON, SENIOR POLICY ADVISOR, NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED, WASHINGTON, D.C.**

Mr. MORRISON. Senator Bond, members of the Committee and Senate staff, thank you for asking me to appear here today. I am James Morrison, senior policy advisor to the National Association for the Self-Employed.

I have been asked to deliver a message. It is a message that we are getting loud and clear from NASE's 320,000 members. It is a message that 141 NASE members who served as delegates to the recent White House Conference on Small Business voted overwhelmingly to send Congress and the White House.

It is a message of frustration and anger about the burdens of Federal regulations and paperwork. Frustration with government demands that often seem pointless and misdirected. Anger when government becomes the adversary rather than the facilitator of improvement. And fear. Fear that somehow, somewhere, they are going to violate a regulation they do not even know about, and fear that that violation will lead to wounding or destroying their business.

All of this is leading to cynicism. Cynicism that what Federal agencies really want is penalties and convictions, not a better society. These are corrosive sentiments in a democracy and it is well that we are beginning to face them squarely. The Clinton administration deserves credit for its ambitious efforts to reinvent government, to instill within it a more citizen-friendly culture. But to make lasting change, the underlying objectives and incentives of agencies must change and that means that the laws must change.

So I also bring a message of hope and gratitude from our members. They resoundingly support the kinds of initiatives found in Senator Bond's Small Business Regulatory Enforcement Fairness Act. The bill starts getting to the root causes of their regulatory grievances, taking up the White House Conference recommendations, and tackling the fundamental issue of regulatory fairness.

Let us look at some of the numbers. Last year, we asked NASE members to identify the biggest obstacles to growth that they faced. More than 40 percent selected paperwork and regulatory burdens imposed by the Government. Amazingly, that response came within 4 percent of the combined effects of Federal, State, and local taxes. It far outstripped access to capital, viewed by many people as the top small business concern.

We think this is a tremendously important finding. Here is why. Businesses with fewer than five employees, the businesses that NASE represents, are creating the lion's share of new jobs. Between 1990 and 1994, these micro-businesses generated about 3.5 million jobs. That job growth by itself nearly offset the 3.8 million jobs that were lost in companies employing more than 500 people.

So consider this: Over 40 percent of these micro-business engines of job creation are telling us that the burdens of regulation and paperwork exceed even the burden of taxes. Regulatory equity is not simply a problem of justice and equity for small business, as impor-



tant as that is. It is an issue with profound economic consequences for the country as a whole.

When we ask small businesses what specific problems they have with regulations, what do they tell us? A 1995 survey found this: 94% said it was unclear what they had to do to comply; 85% percent were confused by frequent changes in regulations and regulatory interpretations; 80% found it difficult to obtain clear and specific answers to questions about compliance; and 80% believed that the requirements to meet full compliance were too costly. Small wonder regulatory reform was such a high priority at the White House Conference.

The great strength of this legislation that the Committee is considering is that it directly addresses these concerns as well as others.

The bill works in two ways. First, it builds on existing law, strengthening and improving the core small business legal defense framework, like the Regulatory Flexibility Act and the Equal Access to Justice Act. Second, it legislatively implements a series of White House Conference recommendations. Like requiring agencies to issue compliance guides and letter rulings and creating small business ombudsmen and review panels, and helping small businesses gain input into the early stages of the regulatory process.

Parts of this bill are so self-evidently necessary and have been for so long as to warrant immediate enactment. Take the Regulatory Flexibility Act. It is supposed to require agencies to reduce their burdens on small businesses whenever possible. But there is a catch. Unlike almost every other part of administrative law, the RFA cannot presently be enforced in court. That means the agencies are essentially free to ignore it, and ignore it they do.

The consensus to end this travesty has finally become overwhelming. The House and Senate have voted by wide margins to do so on separate occasions, the House by 415 to 15, and the President has written a letter in support of it. It was part of the top recommendation on regulations by the White House Conference.

Other parts of the bill are basically sound ideas about which some further questions may need to be answered. In my prepared statement, I mention one with respect to Small Business Development Centers.

That question is but one example of a larger truth. All of us who have looked into the regulatory mess have soon discovered that administrative law is frustratingly murky and filled with pitfalls. In many situations, agency lawyers and other potential adversaries of small business are only too happy to exploit that murkiness and those pitfalls. If these opponents cannot win politically, they will probe for ways to try to win administratively and legally.

It is vital that this inspiring and positive bill not be ambushed in this way. As the bill moves forward, NASE stands ready to work with you to help make it bulletproof. Today's hearing is a significant milestone in that process.

Again, on behalf of all our members and the entire small business community, thank you for this important and ambitious effort.

[The prepared statement and attachment of Mr. Morrison follow.]



***National Association for the Self-Employed***

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Testimony of

James W. Morrison

*Senior Policy Advisor**National Association for the Self-Employed (NASE)*

Senator Bond, members of the Committee, and Senate staff, thank you for asking me to appear here today. I am James Morrison, Senior Policy Advisor to the National Association for the Self-Employed. I've been asked to deliver a message. It's a message we're getting loud and clear from NASE's 320,000 members. It's a message that 141 NASE members -- who served as delegates to the recent White House Conference on Small Business -- voted overwhelmingly to send to Congress and the White House.

It's a message of frustration and anger about the burdens of federal regulations and paperwork. Frustration with government demands that often seem pointless and misdirected. Anger when government becomes the adversary rather than the facilitator of improvement. And fear. Fear that somehow, somewhere, they are violating a regulation they don't even know about. Fear that a government inspector will spot that violation and that the resulting penalties will wound or destroy their business. All of this is leading to cynicism. Cynicism that what federal agencies really want is penalties and convictions, not a better society.

These are corrosive sentiments in a democracy, and it is well that we are beginning to face them squarely. The Clinton Administration deserves credit for its ambitious efforts to "reinvent" government -- to instill within it a more citizen-friendly culture. But to make lasting change, the underlying objectives and incentives of agencies must change. And that means that laws must change.

So I also bring a message of hope and gratitude from our members. They resoundingly support the kind of initiatives found in Senator Bond's Small Business Regulatory Enforcement Fairness Act. The bill starts getting to the root causes of their regulatory grievances. Taking up the White House Conference recommendations. And tackling the fundamental issue of regulatory fairness.

Let's look at some of the numbers. Last year, we asked NASE members to identify the biggest obstacles to growth they faced. More than forty percent selected "paperwork and regulatory burdens" imposed by government. Amazingly, that response came within four percent of the *combined effects* of federal, state and local taxes. And it far outstripped "access to capital" -- viewed by many people as the top small business concern.<sup>1</sup>

Now, we think this is a tremendously important finding. Here's why. Businesses

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<sup>1</sup> Source: NASE Legislative Action Network, membership survey, spring, 1995.

with fewer than 5 employees -- the businesses NASE represents -- are creating the lion's share of the new jobs. Between 1990 and 1994, these microbusinesses generated about three and a half million jobs. That job growth *by itself* nearly offset the 3.8 million jobs that were lost in companies employing more than 500 people.<sup>2</sup> So consider this: Over 40% of these engines of job generation are telling us that the burden of regulations and paperwork exceeds even the burden of taxes! Regulatory equity isn't simply a problem of justice and equity for small business, as important as that is. It is an issue with profound economic consequences for the country as a whole.

And when we ask small businesses what specific problems they have with regulations, what do they tell us? A 1995 survey found this:

- 94% said it was unclear what they had to do to comply
- 85% were confused by frequent changes in regulations or regulatory interpretations
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- 80% believed the requirements to meet full compliance were too costly.<sup>3</sup>

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<sup>2</sup> Source: Office of Advocacy, SBA, based on data from Cognetics, Inc.

<sup>3</sup> Source: Thomas D. Hopkins, *A Survey of Regulatory Burdens*, Report no. PB95-263190, Diversified Research, Inc. for the U.S. Small Business Administration, Office of Advocacy, June, 1995, p. 38. Mirroring findings from

No wonder regulatory reform was such a priority at the White House Conference.

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The bill works in two ways. First, it builds on existing law, strengthening and improving the core small business legal defense framework. Like the Regulatory Flexibility Act and the Equal Access to Justice Act. Second, it legislatively implements a series of White House Conference recommendations. Like requiring agencies to issue compliance guides and letter rulings. And like creating small business ombudsmen and review panels.

Parts of this bill are so self-evidently necessary and have been for so long as to warrant immediate enactment. Take the Regulatory Flexibility Act. It's supposed to require agencies to reduce their burdens on small business whenever possible. But there's a catch. Unlike almost every other part of administrative law, the RFA can't presently be enforced in court. That means the agencies are essentially free to ignore it. And ignore it they do. The consensus to end this travesty has finally

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many such studies, this survey found that two-thirds of the firms faced "moderate to substantial" regulatory burdens and that compliance costs were basically regressive -- imposing a proportionally greater burden on small businesses than on large businesses.

become overwhelming. The House and Senate have voted by wide margins to do so on separate occasions -- the House by 415-15 -- and the President has written a letter in support of it. It was part of the top regulatory recommendation by the White House Conference.

Other parts of the bill are basically sound ideas about which some further questions may need to be answered. Take the role of the Small Business Development Centers. It makes sense to use existing small business-friendly institutions, such as SBDC's, to help small businesses learn what their regulatory obligations are. But will a small business be able to take an SBDC's advice to the bank? Or more precisely, to court, should the small business find itself up against a federal agency? If advice from an SBDC would *not* provide a small business with a legal defense against an agency, then why would small businesses want to follow that advice? But if SBDC advice *did* constitute such a defense, how would SBDC's avoid being pulled into court themselves? We may be opening a 55-gallon drum of worms here.

This is but one example of a larger truth. As all of us who have looked into the regulatory mess have soon discovered, administrative law is frustratingly murky and filled with pitfalls. In many situations, agency lawyers and other adversaries of small business are only too happy to exploit that murkiness and those pitfalls. If these opponents cannot win politically, they will try to deprive us of our gains

administratively and legally.

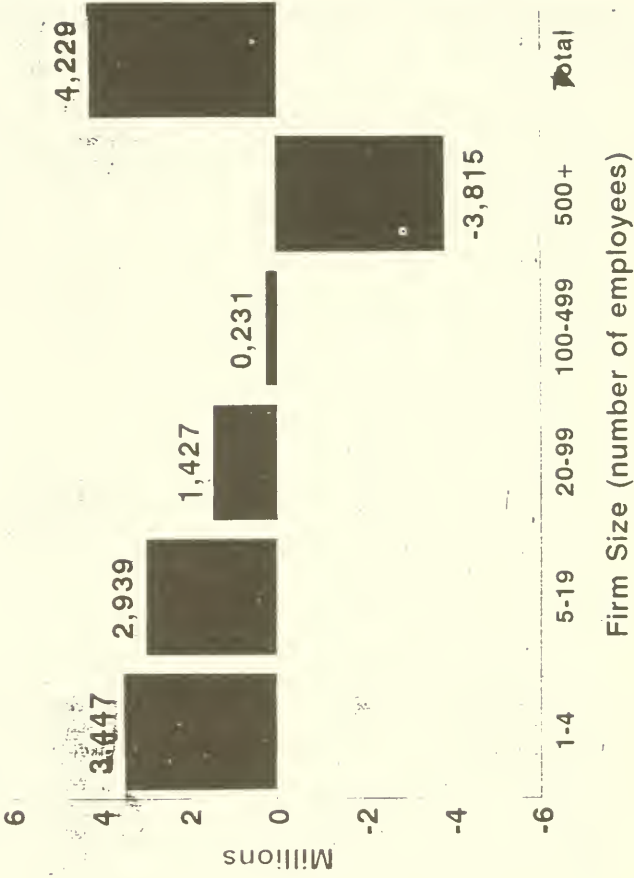
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Again, on behalf of all our members and the entire small business community, thank you for this important, ambitious effort.



# U.S. Job Growth, 1990-1994 (Data in Thousands)

Appendix 1

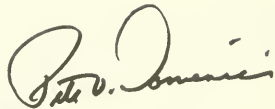


Office of Advocacy, SBA, based upon Coanetics, Inc. data

Chairman BOND. Thank you very much, Mr. Morrison. My thanks to all the panel for the time, the thoughtfulness, and the fact that you do gather together the views of many, many like-minded small businesses.

I will at this point make part of the record a statement by Senator Domenici. He has been a very vocal proponent of ensuring small business participation in the agency rulemaking process. He is a valuable contributor to this measure. He has several other hearings going on as well as meetings and could not be with us. I will make that part of the record.

[The prepared statement of Senator Domenici follows:]



HEARING ON SEN. BOND'S SMALL BUSINESS  
REGULATORY REFORM BILL

STATEMENT OF SENATOR PETE V. DOMENICI

FEBRUARY 28, 1996

Let me begin, Mr. Chairman, by taking a moment to express my appreciation to you for your leadership in moving small business regulatory reform legislation through Congress. No one has done more to help small business than you have. I would also like to thank you for giving me this chance to testify about my initiative to give small businesses the voice they so desperately need in the regulatory process.

Mr. Chairman, I know I don't have to tell you that small businesses create most of the jobs in America. I know that in my state small businesses make up 85 to 90 percent of private employers. In that regard, I have created a New Mexico small business advisory board.

I have also participated in Small Business Committee field hearings throughout my State. Indeed, Mr. Chairman, you saw and heard from those New Mexico small businesses firsthand when you convened a Small Business Committee field hearing in Albuquerque.

So you know, Mr. Chairman, that almost all of the small business owners we talked to--who are the people who create almost all of the private sector jobs in my state--told us just how smothering the explosion in federal regulations has become.

Those small business owners identified the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) as the two federal agencies which promulgate the most unreasonable and burdensome regulations. Further, Mr. Chairman, because a great number of new businesses are being started by women, some of the most vocal critics of EPA's and OSHA's unreasonable regulations are women-owned businesses.

I believe one of the biggest reasons for regulatory inefficiency is that small businesses are just not adequately consulted when regulations affecting them are being proposed and promulgated. I am not alone in this belief. Last year five agencies--including the Small Business Administration, EPA, and OSHA--held a Small Business Forum on Regulatory Reform, and they came up with some conclusions about the problems with the current regulatory process.

Let me quote from the Administration's own report summarizing the principal concerns identified at the forum:

Concern: "The inability of small business owners to comprehend overly complex regulations and those that are overlapping, inconsistent and redundant;"

Concern: "The need for agency regulatory officials to understand the nuances of the regulated industry and the compliance constraints of small business;"

Concern: "The perceived existence of an adversarial relationship between small business owners and federal agencies;"

And finally, Mr. Chairman, I think most important:

Concern: "The need for more small business involvement in the regulatory development process, particularly during the analytic, risk assessment and preliminary drafting stages."

Mr. Chairman, this is the agencies' own report on the problems with the regulatory process.

During the floor debate on last year's regulatory reform bill, Mr. Chairman, you and I successfully added an amendment that would have squarely addressed those concerns. That amendment had the support of the National Federation of Independent Business, and was accepted by the Senate. As we all know, however, the broader regulatory reform bill did pass.

That is why I am so happy to have worked with you, Mr. Chairman, to ensure that my small business advocacy panel initiative was included as a section of the bill we are now considering today.

Mr. Chairman, the structure and process of these advocacy panels is as follows:

- First, prior to publication of an initial regulatory flexibility ("reg flex") analysis, an agency would notify the Chief Counsel for Advocacy of the Small Business Administration of potential impacts of a proposed rule on small business.
- Second, the Chief Counsel would identify individual representatives of small business for advice and recommendations about the proposed rule.
- Third, the agency would convene a review panel consisting of the identified small business representatives, the Office of Information and Regulatory Affairs, and the Chief Counsel, to review the impact of the proposed rule on small business.
- Pursuant to the information obtained at the review panels, and where appropriate, the agency shall modify its proposed rule.
- Finally, the findings and comments of the review panel shall be included as part of the rulemaking record.
- This process shall be repeated prior to the final publication of a reg flex analysis.

Remember, Mr. Chairman, the agencies themselves have recognized that small businesses are underrepresented during rulemakings.

These review panels, convened before the initial and the final reg flex analyses, will ensure that small businesses finally have an adequate voice in the regulatory process. I further believe that these panels, working together so all viewpoints are represented, will be the crux of reasonable, consistent and understandable rulemaking. And perhaps most important, Mr. Chairman, I believe these panels will help reduce counterproductive, unreasonable federal regulations at the same time it is helping to foster the non-adversarial, cooperative relationships that most agree is long overdue between small businesses and federal agencies. Thank you.

Senator BUMPERS. Mr. Chairman, I have one statement here from the Printing Industries of America. Apparently nobody showed up?

Chairman BOND. No, that is Ms. Lechner.

Senator BUMPERS. Was this your statement? I am sorry.

Ms. LECHNER. Yes.

Chairman BOND. We had a choice between Ben Cooper or Ms. Lechner and we took Ms. Lechner.

Senator BUMPERS. We took the right one.

Chairman BOND. Yes.

Ms. LECHNER. Hopefully not a mistake.

Chairman BOND. We appreciate the Printing Industries' participation.

Ms. Lechner did mention the ombudsman question that we raised earlier today and was discussed in the earlier panels. We are getting down to the point where we are going to have to make a choice and draft something, go one way or the other, and I would like to go down the line and get your comments.

No. 1, do you think it would help on the enforcement side? This is not on the interpretation of rules but for relief for a small business who feels aggrieved because the inspector or examiner has been unreasonable. Would it be a help to set up a new position to have an ombudsman to hear those complaints so that the small business would not have to go back to the agency which sent the person out in the first place to complain about overly aggressive activity, but at least the ombudsman could collect information and perhaps identify inspectors or examiners who are overly aggressive?

Would you support such a person? Should that person be an employee of the agency? Should that person be attached to the Small Business Administration apart from the agency? Mr. Swanson?

Mr. SWANSON. Just to get a clarification, you are not talking about an ombudsman versus judicial review?

Chairman BOND. No, no. This is on the enforcement side. This is on the overly aggressive. I hope that everybody agrees we are going to get judicial enforcement of Reg Flex, but this is the one that has come up in so many hearings. People say it is not just the regulations. Sometimes we get a bad apple who wants to come in and just raise Cain and cause us problems. This is a means of registering a complaint.

Mr. SWANSON. I would support such a move and would like to have that outside of the regulatory agency, not only because of the reasons that were mentioned by the earlier panel but also, I think if it was tucked in with the Small Business Administration or with small business advocacy, they would be a little more sensitive to the needs and desires of small business.

Chairman BOND. We also are looking at rating the regulators, agency-by-agency report cards. This is what would come out of it.

Dr. Tucci, what would you think of that option?

Dr. TUCCI. Speaking for NSBU, SMC, and myself, I strongly support the under-funded SBA and having an ombudsman there.

Chairman BOND. Thank you. Mr. Pincus?

Mr. PINCUS. Thank you, Mr. Chairman. I would support an ombudsman, without question. I would also like, however, to suggest

to you that that ombudsman must be considered an important person.

A quick example if I might, sir. I had a problem with the RTC, certainly not of my doing, but the bank unfortunately that I was doing business with—

Senator BUMPERS. You are not alone in that, Mr. Pincus.

Mr. PINCUS. Oh, I know it. I know it, believe me. We had resolved our problems, our mutual problems, if you will, and I will be kind to them at this point since they are no longer around.

Chairman BOND. They have departed and you can speak kindly of them now that they are gone.

Senator BUMPERS. I tried to do that one time and I got my picture on the front page of the *Washington Post* as a result of it, so I quit.

Mr. PINCUS. Unlike a lot of people, at least you got out front on the issues. Many, many people refused to get involved with the issue.

But I had a problem and, ultimately, we had gotten down to the point where we were signing releases, both the RTC and myself, and it went through the local regional office and when it got down to Washington, it was thrown out. I had letters, et cetera, that said that they were allowed to accept what was negotiated and so forth.

I contacted the ombudsman and the ombudsman took a look at my file very quickly and came to closure with the fact that I was on the right in this issue and that was an abuse of the RTC's power. The response I got back from the ombudsman was that, "Danny, you are right and you deserve to have the releases executed as they were negotiated." However, the chief of the RTC area says, "Sue me," and go on. I was left with the ombudsman suggesting that I was correct and encouraging me and so on and so forth but literally was not able to do anything but say, "Hey, Mr. Pincus has a problem," and then go back to Mr. Pincus and say, "Tough."

So the way you do it, I would encourage you to do it, I think it should probably be with the Small Business Administration. I have not thought it through completely so I do not know that answer. I can certainly get you that information. But I would tell you that that individual or individuals must be put in a position of strength so that when they come and they see an egregious problem, they have the ability to correct it or help get it corrected. Thank you.

Chairman BOND. Ms. Lechner, you referred to the EPA ombudsman. Did you indicate a preference for having the ombudsman function in the agency itself?

Ms. LECHNER. A lot of it has to do with the commitment of an office to carry out such a program. At EPA, Karen Brown is running an absolutely fabulous program. However, if it was not for her, we are not sure it would work quite so well.

For us, we would like to see someone in each agency because we feel that the agency is going to be more willing to work with businesses. However, we firmly believe that it has to be coordinated somewhere else, such as at SBA, which you have in your legislation.

It is a tough one to decide. Ombudsmen need to be independent enough to be able to make their points and make things happen, but they also need to be far enough away that they are not going



to get a little black mark against their name by their administrator if they go against them. I do not envy you in coming up with a decision on what you are going to do on this, but we would like to see someone in the agency but also some way to keep them somewhat free from retaliation.

Chairman BOND. It is a tough question. That is why we asked you all about it. That is where we want to get your input.

Finally, Mr. Morrison?

Mr. MORRISON. I would agree with what most of the other witnesses have said. I think the issue is the rewards and incentives for the ombudsman, to some extent. If the ombudsman is going to be effective, he or she will have to enter into a lot of controversies. Putting them in the Small Business Administration means that they will be rewarded for resolving those controversies primarily in terms of small business. Putting them into other agencies makes it a more mixed bag for them in terms of how they are rewarded, and perhaps in some cases changes the focus.

Chairman BOND. So which way would you come down?

Mr. MORRISON. I would strongly recommend putting them in the Small Business Administration.

Chairman BOND. All right, thank you.

Senator Bumpers.

Senator BUMPERS. Mr. Chairman, that is a very good line of questioning you are asking. Let me switch gears just a moment to the issue of judicial review. It seems to me that judicial review is the first and foremost item that needs to be addressed to give the small business community a right to challenge regulations before they go into effect.

An ombudsman will obviously have some input, but he does not have any authority. He can make suggestions on behalf of the industry by saying, "I know this industry, and I know this regulation simply is not going to work. You are imposing a financial burden on small business for virtually no benefit." I strongly favor that. I think I also favor Senator Levin's proposal to put an ombudsman in every agency. I do not think it hurts anything.

I enjoy reading the ombudsman column in the *Washington Post*. I do not think it changes reporting very much, but then, if you happen to be on the receiving end of a strong article by an ombudsman, it has an impact. So I think this ombudsman thing should not be diminished. I think it has great merit.

But when it comes to judicial review, if the ombudsman does not succeed in a few places that people feel strongly about, they ought to have a right to challenge it. The judicial review provision tries to eliminate the problem I am discussing on the front-end, before it happens. We are trying to make sure these regulations make sense before they come out.

Ms. Lechner, I was taken with your comment about EPA trying to enforce a regulation before they put out their compliance statement. I think that is an excellent thought. If EPA is doing that, they ought not to be.

Ms. LECHNER. They are not alone. We ran into the same problem with the Americans with Disabilities Act. As well-intended as it was, to this day, most business owners do not know what to do about it. The agencies are not familiar with how a business works.

For instance, the equipment in a truck body shop is much different from in a printing shop and so it really is useful to work with these trade associations to make sure that the compliance guides make sense. We would rather have something rather than nothing, but we think that compliance guides can go even farther than that. I agree with you completely.

Senator BUMPERS. In that connection, I feel very strongly about Equal Access to Justice, too.

I was involved with Senator Domenici many years ago about trying to make Equal Access to Justice a lot more draconian than it is now. I do not want to bring Whitewater and the Banking Committee into this, but when that is all fleshed out, people who have just been simply guilty of an indiscretion or a misjudgment or some form of negligence will have incurred unbelievable attorney fees.

Now, that is in the criminal sector. It has nothing to do with this. But that is one of the things that troubled me a lot about this. I know a lot of people in my State who are literally going bankrupt with attorney fees, and I do not think we ought to just neglect that.

I am not talking about just in that case. I think there ought to be some fundamental legislation passed to protect people who incur expenses due to the Federal Government getting after them with all its resources. I had an old mentor when I practiced law who said, "Dale, beware of that Federal lawyer who just has one case."

[Laughter.]

Senator BUMPERS. We have an old saying in Arkansas about a guy who had been charged with moonshining. When the bailiff announced the case, *United States v. Jones*, Jones turned to his lawyer and said, "Them don't sound like very fair odds to me."

[Laughter.]

Senator BUMPERS. That is the way the small business community feels. You have the whole weight of the Federal Government against you. I appreciated Mr. Pincus's statement a moment ago, when he said he appreciated the opportunity to come here today. This is the way the system is supposed to work. You are allowed to come here and complain. I appreciate your recognition of that. A lot of people do not appreciate that sometimes we do our very best here to hear you and to try to correct these things. We get as frustrated as you do. I tell my constituents, "Look, I am fighting with the same people you are."

I want to say to all of you that I thought your statements were excellent. I thought they were timely, and I thought they were right on target. Concerning the fall provision, was it you, Mr. Pincus, talking about the fall provision?

Mr. PINCUS. Yes, sir.

Senator BUMPERS. In the pork industry, we say you try to get everything but the squeal out of the pig. They try to use everything they can, so it will show up in the bottom line of their profits.

However, if you write regulations at OSHA, for example, to reach the ultimate protection so that nobody ever gets hurt, the price of homes in this country is going to be out of sight. You cannot always protect somebody against his own negligence or his own lack of judgment.

But that is often what we do in the regulatory process. We just keep adding on. Well, this might happen, so they draft a regulation

for that. Then they carry it a little further. That is one of the reasons this thing winds up like Dave Barry described the IRS regulations.

Mr. Chairman, those are my comments.

Chairman BOND. Thank you very much for your question, Senator Bumpers.

Senator BUMPERS. Mr. Pincus wanted to respond, I think.

Chairman BOND. I was going to say the answer to that is, "yes," but Mr. Pincus?

Mr. PINCUS. I appreciate your recognition of my comment on fall protection. I just want to reemphasize and underline that it would not have happened. We would not have met and been able to reach some sort of a compromise with OSHA if it was not for the appropriations process, if it was not for what Congress did and actually generate the attention in that department that it did.

That has to tell you something. If those departments are so independent that they do not care generally unless something else external to it comes in and starts to guide it, that makes the ombudsman provision appropriate. It makes the judicial process absolutely appropriate, and forgive me, but I am not sure I can understand how due process can be so draconian. That is just real hard for me to get over.

Due process is due process. Our No. 194 at the White House Conference says it. It says specifically that notice and the opportunity to be heard, innocent until proven guilty, and an impartial judge is part of that. All of us that came together, all 2,000 of us agreed on that, voted overwhelmingly for it.

The administrative process, and let us not forget that the White House Conference on Small Business emphasized this well, that there should be an administrative appeal process which certainly could help the burdening program.

So thank you for the recognition, Senator.

Senator BUMPERS. Thank you.

Chairman BOND. Thank you, Mr. Pincus.

Let me ask a rather technical question. We have had several different versions of Reg Flex. Reg Flex has gone through some what I guess Calvin and Hobbes would call transmogrifications. Do any of you on behalf of the people and the organizations you represent have any specific views on the language that we have in this bill as opposed to other language? Do any of you feel that other language is preferable on the Reg Flex provision? Mr. Swanson?

Mr. SWANSON. No, sir.

Chairman BOND. Mr. Morrison, do you have any comment?

Mr. MORRISON. I think that the language that you have been developing in this Committee, Senator Bond, is definitely a strengthening of the language over what we saw in the House, personally.

Chairman BOND. Dr. Tucci.

Dr. TUCCI. NSBU supports the language of this bill and we found that a lot of time has been taken in crafting it, and in looking at other bills, we see that it is focusing on small business and we appreciate the fact that it is focusing on small business.

Chairman BOND. Thank you for your comment. Ms. Lechner.

Ms. LECHNER. Mr. Chairman, we have not taken a specific position on the Reg Flex Act, but having read it, it looks very good.

Chairman BOND. Mr. Pincus.

Mr. PINCUS. Mr. Chairman, we encourage it as it is written, however, with one caveat, if I may, and that is since I have been given a little bit of time, I have asked that we take that bill and actually get every one of our White House Conference on Small Business attendees who have really been part of that process to take a look, and if you will give me just within the window of opportunity for response that you gave with the rest of my statement, I would appreciate it.

Chairman BOND. We would welcome that input. Frankly, we may be looking at a window of opportunity that is going to open and close quickly. I am trying to find out. If we have a chance to move this, please forgive me if we go ahead and move it if we have to. If you come back with a different view, maybe we can change it later, but from what I am hearing, it could be as early as next week that we have the opportunity—

Senator BUMPERS. To mark this bill up?

Chairman BOND. They may want it on the floor.

Senator BUMPERS. That is fine with me.

Mr. PINCUS. Do not hold it up on my account.

[Laughter.]

Chairman BOND. If the stars are in the right configuration and the moon and everything, the tides are right, if we are ready to go, it would be my intent if we have agreement on this Committee, and there seems to be the general direction, and your input is very important because I want this to be a Bond-Bumpers bill when we go, but if we can in the days ahead get any—if you have any important changes, please let us know immediately, because when that window opens up, I would like to have something this Committee could support on a bipartisan basis and say that the most respected voices representing small business agree generally with the thrust of this measure. That may be the best way to move it. We are always glad to get additional input, but this one, I think possibly we may need to do it very quickly.

Let me ask just one thing about the IRS. Dr. Tucci said the interpretive rules should be included. You are not talking, are you, about the less formal IRS policy statements and letter rulings, are you?

Dr. TUCCI. We are in favor of the IRS being included at National Small Business United.

Chairman BOND. But if it is a letter ruling or policy statements, would those be included, as well?

Dr. TUCCI. A lot of times, there are cases where consideration can be given to small business and small business appreciates it when that consideration is given.

Chairman BOND. All right. Any further comments from any of you on things that we have discussed today that you needed to go back and cover?

[No response.]

Chairman BOND. Senator Bumpers, anything else?

Senator BUMPERS. Nothing further, Mr. Chairman. Thank you again.

Chairman BOND. I want to express my thanks to this panel and to the first panel. I think we have had some very good discussions,

excellent testimony. We very much appreciate the time. Knowing that you are of and from small business, I know that taking time away from what you do is a major commitment. I will recognize that commitment and thank you very much for your testimony.

The record will be open, but the window of opportunity is closing quickly so any further comments or questions, we would welcome as soon as possible.

Thank you and the hearing is adjourned.

[Whereupon, at 11:43 a.m., the Committee was adjourned.]



**COMMENTS FOR THE RECORD**





February 28, 1996

The Honorable Christopher Bond  
Chairman  
Small Business Committee  
United States Senate  
428A Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Bond:

Thank you for introducing "The Small Business Regulatory Enforcement Fairness Act of 1996," S. 942. The American Subcontractors Association is submitting testimony for the Small Business Committee's hearing today on this legislation.

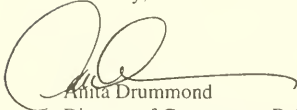
ASA, a national organization representing specialty contractors in the construction industry, believes that the Regulatory Flexibility Act is one of the most important laws for small businesses. However, agencies have failed to fully comply since its passage in 1980. One of the most important elements of S. 942 is the provision that allows judicial review of federal agencies' compliance with the Act.

When regulations are proposed, agencies often turn a deaf ear to the complaints of small business organizations and the Small Business Administration's Office of Advocacy. As certain agencies failed to fully consider regulations' impact on small businesses and offer alternative approaches to regulations, we have been given little recourse to challenge the government.

It is incumbent upon Congress to advance this issue which attracts bi-partisan support. Please urge your colleagues to hit a home run for small business and give us real power over regulations.

ASA appreciates your leadership on this issue, and please accept our comments into the record.

Sincerely,



Anita Drummond

Director of Government Relations

cc: Jere Glover, Chief Counsel for Advocacy

AMERICAN SUBCONTRACTORS ASSOCIATION, INC.  
1004 DUKE STREET, ALEXANDRIA, VA 22314  
(703) 684-3450

Statement of the

# American Subcontractors Association

Before the  
**Committee on Small Business**

United States Senate

February 28, 1996

on

**“The Small Business Regulatory  
Enforcement Fairness Act of 1996”**  
S. 942



1004 Duke Street • Alexandria, Virginia 22314-3512  
(703) 684-3450 • FAX (703) 836-3482

## REGULATORY REFORM

The American Subcontractors Association (ASA) is a national trade association with more than 6,000 firms representing all major construction trades in 75 chapters. In addition to its individual company members, ASA represents 19 other specialty trade associations with members of their own. ASA appreciates the opportunity to present the Small Business Committee with testimony on an issue that is so vital to the success of small businesses. While we hear so much about small business being the engine of our economy, ASA believes there are many road blocks that have long stalled the growth of entrepreneurship.

One of those road blocks has been the failure of the federal government to fully consider the consequences of regulation on small businesses, and therefore, the impact on the economy and the job market. It is time for Congress to send a clear message to the administration: the Regulatory Flexibility Act (RFA) is the law of the land.

ASA appreciates the efforts of Chairman Christopher Bond in the introduction of "The Small Business Regulatory Enforcement Fairness Act of 1996," S. 942. This legislation would give the RFA the teeth of judicial review grievously absent from this law.

The small business agenda for regulatory reform will go unfulfilled without the passage of legislation that will allow judicial review of federal agencies' compliance with the Regulatory Flexibility Act.

Congress recognized that federal requirements on small businesses needed to be reduced when it enacted the Regulatory Flexibility Act of 1980. This law established procedures for reducing the regulatory burden on small businesses. However, since its enactment, the federal agencies have failed to fully implement the tenets of the Act. The Regulatory Flexibility Act amended the Administrative Procedures Act to ensure that regulators do not routinely burden small businesses disproportionately by imposing uniform regulations on all entities regardless of size. Agencies must analyze their regulations' impact on small companies and organizations to balance the burden imposed by regulations against their benefits, and propose alternatives to regulations which create economic disparities between different-sized entities.

However, as agencies have failed to meet the requirements of the Regulatory Flexibility Act, small businesses have been left with little recourse.

A perfect example of agencies' abuse of their responsibilities under the Regulatory Flexibility Act was implementation of the "Federal Acquisition Streamlining Act of 1995" (P.L. 103-355). These rules, issued by the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration under the oversight of the Office of Federal Procurement Policy, generally have ignored the applicability of the RFA. When the agencies have acknowledged the applicability of the Act, they have at best given short shrift to the law's analytical requirements over the objectives of the small business community and the Small Business Administration's Chief Counsel on Advocacy. For example, the agencies are expanding

the use of "bundling" contracts for administrative convenience, and in the process, small businesses have been eliminated from the field of offerors because contracts have become so large.

The administration is now facing implementation of provisions in the recently passed Defense Authorization bill for Fiscal Year 1996 (P.L. 104-106). Division D of the legislation overhauls the federal procurement system. The new law gives the administration the authority to implement "special simplified procedures" for acquiring commercial items, services and property, with no safeguards for small business, for all contracts below \$5 million.

As these new regulations are implemented within the next 10 months, the small business community needs a strong Regulatory Flexibility Act. Agencies will be changing the procedures for 99 percent of the 21 million federal procurement actions performed each year. The small businesses that offer goods and services to the federal government expect more regulations will be proposed that provide administrative convenience, while minimizing the "inconvenience" of small business participation in federal contracts. The regulations are not expected to be small business-friendly. This legislation presents a hurdle coupled with the weaknesses of the Regulatory Flexibility Act that could have a detrimental impact on contractors which supply the Federal market.

ASA supports judicial review of agency action (or inaction) under the Regulatory Flexibility Act. Small businesses need an effective tool to assure that agencies cannot ignore the requirements to conduct a regulatory flexibility analysis. The agencies need to be stopped from conducting wholly perfunctory reviews of regulations and in the process ignoring public comments and those of the SBA's Chief Counsel on Advocacy.

Thank you for holding a hearing on this important issue, and ASA urges the Small Business Committee to advance this legislation.

American Subcontractors Association, Inc.  
Senate Small Business Committee Hearing, February 28, 1996









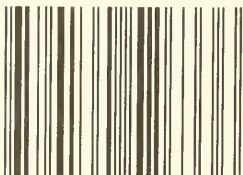
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